

7604
No. 12383

United States
Court of Appeals
for the Ninth Circuit.

IVA IKUKO TOGURI D'AQUINO,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record
In Two Volumes
Volume I
(Pages 1 to 462)

Appeal from the United States District Court,
Northern District of California,
Southern Division.

FILED
MAY 4 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

WAYNE M. COLLINS, ESQ.,

GEORGE OLSHAUSEN, ESQ.,

THEODORE TAMBA, ESQ.,

1701 Mills Building,

San Francisco, California,

Attorneys for Defendant and Appellant.

FRANK J. HENNESSY, ESQ.,

United States Attorney,

Northern District of California,

Post Office Building,

San Francisco, California.

TOM DE WOLFE, ESQ.,

JAMES KNAPP, ESQ.,

Special Assistants to the United States

Attorney General,

Attorneys for the Plaintiff and Appellee.

In the Southern Division of the United States
District Court, for the Northern District of
California.

No. 31712-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IVA IKUKO TOGURI D'AQUINO,

Defendant.

INDICTMENT

Treason (Title 18 U.S.C., Sec. 1)

The Grand Jurors for the United States of America duly impaneled and sworn in the Southern Division of the United States District Court for the Northern District of California and inquiring in and for that District and Division, upon their oaths present:

1. That Iva Ikuko Toguri D'Aquino, whose full and true name is to said Grand Jurors unknown, other than as hereinabove stated, hereinafter called "said defendant," was born in Los Angeles County, California, on July 4, 1916, and she has been at all times herein mentioned and is now a citizen of the United States of America and a person owing allegiance to the United States of America.

2. That said defendant, at Tokyo, Japan, and other places within the Empire of Japan, and out-

side the jurisdiction of any particular state and district of the United States, continuously and at all times beginning on or about the 1st day of November, 1943, and continuing thereafter up to and including the 13th day of August, 1945, under the circumstances and conditions and in the manner and by the means hereinafter set forth, she then and there being a citizen of the United States and a person owing allegiance to the United States, in violation of said duty of allegiance, did knowingly, wilfully, unlawfully, feloniously, intentionally, traitorously and treasonably adhere to the enemies of the United States, and more particularly, to wit, the Imperial Japanese Government, with which the United States at all times since December 8, 1941, and during the times set forth in this indictment, has been at war, and the Broadcasting Corporation of Japan and the officials and employees thereof, giving to the said enemies of the United States aid and comfort within the United States, Japan and elsewhere, that is to say:

3. That the aforesaid adherence of said defendant and the giving of aid and comfort by her to the aforesaid enemies of the United States during the period aforesaid consisted:

(a) Of working as a radio speaker, radio announcer, radio script writer, and as a broadcaster of recorded music in the short wave radio broadcasting station of the Broadcasting Corporation of Japan, a company controlled by the Imperial Japanese Government, which work included the prepa-

ration and composition of radio scripts, talks and announcements, the announcing of the same, and the announcing and introduction of musical recordings and talks for broadcast by radio from Japan to members of the armed forces of the United States and their allies in the Pacific Ocean area, and to people elsewhere.

(b) Of working as a composer and organizer of radio broadcasting programs for subsequent broadcast by radio from Japan to members of the armed forces of the United States and their Allies in the Pacific Ocean area and to people elsewhere.

That the aforesaid activities of said defendant were intended to destroy confidence in the war effort of the United States and its Allies, to undermine and lower American and Allied military morale, to create nostalgia in the minds of the American and Allied armed forces, to create war weariness among members of the American and Allied armed forces, to discourage members of the American and Allied armed forces, and to impair the capacity of the United States to wage war against its enemies.

4. And the Grand Jurors aforesaid upon their oaths aforesaid do further present that said defendant, in the prosecution, performance and execution of said treason and of said unlawful, traitorous and treasonable adhering and giving aid and comfort to the enemies of the United States as aforesaid, at the several times hereinafter set forth in the specifications hereof (being times when the United States was at war with the Imperial Jap-

anese Government), did knowingly, wilfully, unlawfully, feloniously, traitorously and treasonably and with treasonable intent in her to adhere to and give aid and comfort to said enemies, perform, do and commit certain overt and manifest acts which gave aid and comfort to said enemies, that is to say:

1. That on a day between March 1, 1944, and May 1, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the offices of the Broadcasting Corporation of Japan, did discuss with another person the proposed participation of said defendant in a radio broadcasting program.

2. That on a day between March 1, 1944, and June 1, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the offices of the Broadcasting Corporation of Japan, did discuss with employees of said corporation the nature and quality of a specific proposed radio broadcast.

3. That on a day between March 1, 1944, and June 1, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in a studio of the Broadcasting Corporation of Japan, did speak into a microphone regarding the introduction of a program dealing with a motion picture involving war.

4. That on a date between August 1, 1944, and December 1, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan,

did speak into a microphone in a studio of the Broadcasting Corporation of Japan referring to enemies of Japan.

5. That on a day during October, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the offices of the Broadcasting Corporation of Japan, did prepare a script for subsequent radio broadcast concerning the loss of ships.

6. That on a day during October, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in a broadcasting studio of the Broadcasting Corporation of Japan, did speak into a microphone concerning the loss of ships.

7. That on or about May 23, 1945, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the offices of the Broadcasting Corporation of Japan, did prepare a radio script for subsequent broadcast.

8. That on a day between May 1, 1945, and July 31, 1945, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, did speak into a microphone in a studio of the Broadcasting Corporation of Japan, and did then and there engage in an entertainment dialogue with an employee of the Broadcasting Corporation of Japan for radio broadcast purposes.

That said defendant committed each and every one of the overt acts herein described with trea-

sonable intent and for the purpose of, and with the intent in her to adhere to and give aid and comfort to the Imperial Japanese Government, and to the Broadcasting Corporation of Japan and the officials and employees thereof, enemies of the United States, and said defendant committed each and every one of said overt acts contrary to her duty of allegiance to the United States and to the form of the statute and Constitution in such case made and provided, and against the peace and dignity of the United States.

That the Northern District of California was the Federal Judicial District into which the defendant was first brought shortly prior to the date of the return of this indictment.

A True Bill.

/s/ JOHN P. JONES,
Foreman.

/s/ FRANK J. HENNESSY,
U. S. Attorney,

/s/ TOM DE WOLFE,
/s/ JOHN B. HOGAN,
Special Assistants to the
Attorney General.

Presented in open court and ordered Filed.

[Endorsed]: Filed October 8, 1948.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 11th day of October, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Louis E. Goodman,
District Judge, Sitting for and on Behalf
of Honorable Michael J. Roche, District
Judge.

[Title of Cause.]

(Minute Order Entry on Arraignment and Oral Motion for Bail and Continuing Cause to Oct. 14 at 1:00 P.M. for Hearing on Motion that Defendant Be Admitted to Bail.)

Now comes the United States Marshal and produced the defendant, Iva Ikuko Toguri D'Aquino, in open Court pursuant to provisions of bench warrant heretofore issued. Wayne Collins, Esq., appeared as attorney for defendant. Tom De Wolfe, Esq., Special Assistant to the Attorney General, and Hon. Frank J. Hennessy, United States Attorney, were present for the United States.

On motion of Mr. Hennessy, the defendant was called for arraignment. The defendant was duly informed of the return of the Indictment by the

United States Grand Jury for the Northern District of California, at San Francisco, charging defendant with violation of Title 18 U.S.C., Sec. 1, (treason). The defendant was asked if she was the person named therein, and upon her answer that she was and that her true name was as charged, thereupon Mr. Collins waived her reading of the Indictment and copy thereof was handed to her. The defendant stated that she understood the charge against her.

Mr. Collins made an oral motion that the defendant be admitted to bail.

Ordered that this case be continued to October 25, 1948, to plead; and October 14, 1948, at 1 p.m., for hearing of motion that defendant be admitted to bail.

Further ordered that the defendant be admitted to the custody of the United States Marshal.

[Title of District Court and Cause.]

NOTICE OF MOTION

To Frank J. Hennessy, U. S. Attorney, Attorney
for Plaintiff:

You will please take notice that, by order of this Court duly made and entered on October 11, 1948, the defendant's oral motion made in open court on said date to be admitted to bail, which said motion defendant's counsel then and there stated would

be followed by the filing of a formal written motion therefor, copy of which is attached hereto, by an order of said court duly made on said date was set for hearing and argument before the said Court, Hon. Louis E. Goodman, presiding, for Thursday, October 14, 1948, at the hour of 1 o'clock p.m. of said day.

s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

MOTION TO BE ADMITTED TO BAIL

Defendant moves the Court, under Title 18 USCA, Sec. 597, and Rule 46 (a) of the Rules of Criminal Procedure for the District Courts of the United States, to be admitted to bail.

This motion will be made on the oral motion heretofore made, the pleadings herein, this motion, notice thereof, affidavit and points and authorities in support thereof.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Receipt of a copy of the above motion, notice thereof, affidavit and points and authorities in support thereof, are admitted this 15th day of October, 1948.

/s/ FRANK J. HENNESSY,
Attorney for Plaintiff.

AFFIDAVIT IN SUPPORT OF MOTION
FOR BAIL

The defendant, Iva Ikuko Toguri D'Aquino, an adult female, now resides and continuously ever since about July 25, 1941, has resided in Tokyo, Japan, and, on April 19, 1945, there was lawfully united in marriage to one, Felipe J. D'Aquino, a national and citizen of Portugal and resident in Tokyo, Japan, according to the rites of the Roman Catholic faith, by Father John Baptiste Kraus, a duly ordained priest of the Jesuit Order of the Roman Catholic Church, at Sophia University Chapel in Tokyo, Japan, and she thereby and thereupon, pursuant to the law of Portugal, as also the law of Japan, as also by the law of all other civilized nations and by international law, became and ever since then continuously has been and now is a national and citizen of Portugal and as such within the exclusive lawful jurisdiction of the Government of Portugal while resident in Japan and, as such a foreigner lawfully residing in Tokyo, Japan, was and is entitled to the protection of the laws of Japan, and was at all of said times and now is without the lawful jurisdiction of the United States; that by reason of the foregoing, at all times since her said marriage, which ever since has been and now is in full force and effect, she continuously has been and now is a bona fide resident of Japan, residing therein at 396 Ikejiri Machi, Setagaya-Ku, Tokyo, with her said husband, and a domiciliary, national and citizen of Portugal.

While so residing with her husband in Tokyo, as aforesaid, defendant forcibly was seized by agents of the United States, without legal authority or jurisdiction, at Yokohama, Japan, and was subjected to arrest, detention and questioning on or about September 5th and 6th, 1945, and thereafter was released on said September 6, 1945.

While so residing with her husband in Tokyo, as aforesaid, defendant forcibly was seized by agents of the United States, whom affiant is informed and believes were acting under the orders of the Attorney General of the United States, on October 17, 1945, and was taken, by them, from her said home and husband and confined to the Yokohama Prison in Yokohama, Japan, where she was held until November 16, 1945, when she was transferred to Sugamo Prison in Tokyo, Japan, where she remained until she was released therefrom by said authorities on October 25, 1946. While so detained and imprisoned she was, for approximately three months, held incommunicado by said authorities from her husband and visitors and without being afforded any opportunity whatever to obtain counsel or the assistance of any friend. The said arrest and imprisonment were wholly without authority of law and without valid process having issued therefor.

Thereafter, on August 26, 1948, defendant again was forcibly and unlawfully seized and arrested by agents of the United States, acting under orders of the Attorney General of the United States, with-

out any notice thereof being given by any of them or by the United States to the Government of Portugal, or to any of its diplomatic or consular officers, albeit they knew she and her said husband both were nationals and citizens of Portugal; and thereupon said agents, so acting under said orders, took her into custody, albeit without lawful right, sanction, jurisdiction, authority or process therefor, and imprisoned her in the said Sugamo Prison in Tokyo, Japan, and thereafter, by agents of the United States, was forcibly taken aboard the S.S. General F. H. Hodges, a United States transport vessel, in Yokohama Harbor, in custody of said agents, and said vessel thereafter sailed therefrom to the harbor of San Francisco, California; when and while said vessel, on September 25, 1948, there was in progress of docking, the defendant was seized aboard said vessel by agents of the U. S. Federal Bureau of Investigation, one of whom was Fred Tillman, a special agent, F.B.I., the names of the four or five others being unknown to affiant, upon a purported warrant of arrest issued upon a complaint filed in this Court on September 25, 1948, being numbered and entitled Commissioners' Docket No. 11, Case No. 5136, affiant being of the opinion said purported warrant issued and said complaint was filed before said vessel docked, as aforesaid; that, thereupon, defendant was brought before United States Commissioner Francis J. Fox in the Post Office Building, San Francisco, California, where, on her arrival at approximately

11:40 a.m., in custody, defendant formally was arrested by Hon. George Vice, U. S. Marshal for this District, and thereupon, said Commissioner ordered defendant into the custody of said Marshal and continued her hearing on said complaint to October 7, 1948, affiant then and there appearing as counsel for defendant; thereafter, on said October 7, 1948, said hearing was continued to October 14, 1948, with the consent of affiant, defendant's counsel, in order to enable the grand jury for this district to complete its inquiry into said matter.

On September 25, 1948, affiant was conferring with his client, the defendant, at her place of detention under the aforesaid order of said Commissioner, to wit, County Jail No. 3, Dunbar and Washington Streets, San Francisco, California, at approximately 3:30 p.m., when he was informed by the matron in charge of said jail that he would have to leave because a deputy U. S. Marshal was coming to take her to the U. S. Marshal's office in the Post Office Building, San Francisco, and it was necessary for defendant to change from prison to civilian garb. That affiant protested said interference with the privileged conference between affiant and defendant and thereupon left said jail and was admitted to the office of County Jail No. 2 in the same building where he telephoned Market 1-2500 and asked the operator at said number to connect him with the U. S. Marshal's office and thereafter was informed by her that there was no answer to her ring and thereupon affiant requested

her to ring the U. S. Attorney's office and the telephone of Thomas DeWolfe and John Hogan, Esqs., Special Assistant Attorney's General in that office and thereafter was informed that none of said telephones answered her rings and that the Marshal's and U. S. Attorney's offices were closed as it was Saturday afternoon;

Thereupon affiant returned to the corridor outside County Jail No. 3 where defendant was lodged and waited and at approximately 3:55 p.m. Deputy Marshal James Eagan appeared, was admitted to said jail and emerged with defendant in his custody. I joined them and we entered an automobile of the Federal Bureau of Investigation driven by John Eldon Dunn, special agent of that bureau, who drove us to the Federal Office Building, San Francisco, where we entered the office of that Bureau and there agents of that Bureau, acting under the orders of the aforesaid Thomas DeWolfe and John Hogan, holding defendant in duress and subjecting her to duress, over her and my protests, secretly attempted to question her in a room from which affiant was excluded. Thereafter, on Monday, September 27, 1948, affiant filed a formal protest with said Commissioner, Marshal, Special Assistant Attorneys General, agents of the said Bureau, and others, a copy of said written protest being attached hereto and incorporated herein.

The defendant is an indigent; aside from used clothing and a few personal effects, the reasonable value of which does not exceed \$25.00, she pos-

sesses the following assets only, viz., the equivalent of approximately \$100 in Japanese yen which is on deposit on the Postal Savings Bank in Tokyo, and a remote claim of right, subservient to the right of the Alien Property Custodian, in and to certain real property situated in Los Angeles County, California, which property has an approximate value of \$3,500, the interest of defendant therein, however, being at most a disputable claim and hence of substantially no value.

Defendant is a person of good moral character and has not heretofore been accused of any crime.

It will be necessary for affiant, in preparing the defense of defendant, to interview witnesses, whose number may exceed one hundred (100) persons; it will be necessary for counsel to confer with defendant in connection with each such witness to be interviewed; it is essential to her said defense that defendant personally see each witness and talk to each such witness in the presence of her counsel; such interviews are impossible while defendant is detained in said County Jail No. 3, by reason of the fact she there is held incommunicado from all persons except her father, sister and affiant; no person other than counsel is there permitted to visit and see defendant face to face; defendant's father and sister there are not permitted to see her features nor could any of her witnesses by reason of the fact that were they to be allowed to visit her they could speak to her only through double

iron mesh wires which obscures and prevents the visibility of defendant and such persons; the closed section of the room there reserved for counsel to interview clients is tiny, encased in glass, lacks ventilation, and counsel and client are separated by a bench-like desk and a partition of glass approximately two and one-half feet high mounted thereon, all of which render consultations difficult;

By reason of the fact she is detained in said County Jail No. 3 where at all hours of the night arrested women are incarcerated and make noise, it is practically impossible for defendant to obtain restful sleep, by reason of which she grows increasingly nervous and ill while under tension. Defendant is frail and weighs approximately 110 pounds. On January 5, 1948, she lost her baby at birth. She suffers from recurrent arthritis.

There is no danger that defendant, if admitted to reasonable bail, will depart from the jurisdiction of the court; defendant and her counsel are willing, if the court sees fit so to provide that she be required to report periodically to the court or any agent who may be designated by the court, pending the final outcome of the cause.

/s/ WAYNE M. COLLINS,
Affiant.

Subscribed and sworn to before me this thirteenth day of October, 1948.

/s/ JANE M. DAUGHERTY,

Notary Public in and for the City and County of
San Francisco, State of California.

Wayne M. Collins
Attorney at Law

Mills Tower, 220 Bush Street
San Francisco 4, California
Garfield 1-1218

September 27, 1948.

Hon. Francis J. Fox, U. S. Commissioner, San
Francisco, Calif.

Hon. George Vice, U. S. Marshal, San Francisco,
Calif.

Hon. Tom C. Clark, U. S. Attorney General, Wash-
ington, D. C.

John Hogan, Special Asst. Attorney General, San
Francisco, Calif.

Thomas De Wolfe, Special Asst. Attorney General,
San Francisco, Calif.

H. M. Kimball, Agent in Charge, U. S. F.B.I., San
Francisco, Calif.

John Eldon Dunn, Special Agent, F.B.I., San Fran-
cisco, Calif.

Fred Tillman, Special Agent, F.B.I., San Fran-
cisco, Calif.

William Simon, Special Agent, F.B.I., San Fran-
cisco, Calif.

R. C. Kopriva, Special Agent, F.B.I., San Francisco, Calif.

Gentlemen:

Re: U. S. v. Iva Toguri D'Aquino, Com.

Docket No. 11, Case No. 5136.

U. S. District Court, Northern District of California, Southern Division.

On last Saturday morning, September 25, 1948, near noon, I appeared as counsel for Mrs. Iva Toguri D'Aquino at her arraignment before U. S. Commissioner Francis J. Fox on a purported charge of a violation of Title 18, U. S. Code, Sec. 1, on a complaint, wholly insufficient on its face for failing to state a public offense, filed by John Eldon Dunn, special agent of the F.B.I., in the U. S. District Court for the Northern District of California, Southern Division. During the course of that proceeding I orally and openly instructed Mrs. D'Aquino, my client, not to talk to or discuss the charges therein contained with any officers, agents, representatives, servants or employees of the U. S. Government or any other person or persons and not to make any verbal or written statement to any such person or persons and not to answer any questions that might be put to her by any such person or persons without first consulting me.

Thereafter, near the close of said proceeding, I orally requested the said Commissioner to inform me where my client was to be taken at the close

of the proceeding and he informed me that she was in custody of the U. S. Marshal and would be taken by the U. S. Marshal to his office in the Post Office Building from whence she would be taken to San Francisco County Jail No. 3. The Hon. George Vice, U. S. Marshal, then and there orally confirmed that statement to me. Thereupon I asked whether she was to be taken from his custody to the office of the F.B.I. for questioning purposes, inasmuch as I had heard a statement from someone in the hearing room that such a purpose was intended, and was answered that she would not so be taken. Thereupon, I orally informed those present that I protested against any removal of my client from said custody and protested against any intended taking of her to any office of the F.B.I. or before any agent or agents of the F.B.I. or any other governmental officers or agencies for any purposes whatsoever without judicial process thereon first issuing and without advance notice to me and thereupon I stated to the agents of the U. S. then and there present that my client would not discuss the case or charges with any officer, agent, or employee of the Government and asked them not to seek so to do. The Hon. Francis J. Fox, U. S. Commissioner, the Hon. George Vice, U. S. Marshal, Thomas De Wolfe, attorney and Special Assistant Attorney General, and John Eldon Dunn, special agent of the F.B.I., among other governmental officers and agents, were present at said time and place.

Thereafter my said client was escorted to the U. S. Marshal's office in the Post Office Building and, shortly thereafter, was escorted by U. S. Deputy Marshal, by automobile, to S. F. County Jail No. 3, where she was confined without bail by order of U. S. Commissioner Francis J. Fox.

Thereafter, at about 2:40 p.m. of said day, I went to said Jail and was admitted to confer with my client. My conference with my client was interrupted at approximately 3:30 p.m. by the matron-in-charge who informed me she had just received a telephone call from the U. S. Marshal's office that a deputy marshal was coming in an automobile to take my client to the U. S. Marshal's office and that, for said reason, my conference would have to be terminated because she had to arrange for Mrs. D'Aquino to change from her prison garb to civilian clothes for that purpose and, although I orally protested on the ground the Marshal's office was closed on Saturday afternoon and that no right existed to remove her from the jail without being so authorized by judicial process, for any examination purposes whatsoever and that no such process had or could have been issued Saturday afternoon because the courts were closed and no notice had been given to me of any such intended removal for such purposes and that any such removal was unauthorized and violative of my client's rights, she informed me she was acting under orders and would obey those orders. Thereupon I was escorted to the door and then took the elevator to the next floor, County

Jail No. 2, where I was permitted to enter and there telephoned Market 1-2500 and asked the operator to connect me with the U. S. Marshal's office. The telephone operator informed me that she tried to ring his office, that there was no answer, that the Marshal's office was closed Saturday afternoon. I requested her to connect me with the U. S. Attorney's office and she thereafter informed me that she had rung there and received no answer. Thereupon I requested her to ring the telephone of Mr. John Hogan and Mr. Thomas De Wolfe, Special Assistant Attorneys General, and thereafter she told me that neither of them answered her rings. Thereupon I returned to the 3rd Floor of that building and waited in the corridor outside County Jail No. 3 for the arrival of the U. S. Deputy Marshal.

At approximately 3:55 p.m. on said Saturday, James Eagan, Deputy U. S. Marshal, appeared and gained admittance to that Jail. My client thereupon was delivered over to him and I accompanied them down the elevator, through the courtyard and the alley leading north to Washington Street to a parked dark (FBI) sedan in which John Eldon Dunn, special agent of the F.B.I., was sitting in the rear seat. Thereupon Mr. Eagan entered the car and sat in the front seat. Mr. Dunn thereupon drove east on Washington Street and turned and drove south on Montgomery Street, and parked at the curb in front of the northern end of the Commercial Union Building, 315 Montgomery, to leave

the car, as he said at the time to buy some cigarettes in the Pacific National Bank Building lobby. He returned in about four minutes without, however, exhibiting any such purchase, and thereupon drove the car to the main center entrance of the Federal Office Building in San Francisco and parked the car near that entrance. Thereupon we entered that building, took the elevator to the 4th Floor and entered the office of the F.B.I. where Mrs. D'Aquino and I were invited to be seated in the reception room.

Thereupon Mr. R. C. Kopriva of the F.B.I. informed me that Mrs. D'Aquino had been brought there for questioning. I asked him who had ordered her brought there and who the persons were who intended to question her. He informed me he was not permitted to inform me of these matters. I told him that I had instructed my client not to answer any questions whatever for any person whomsoever and then and there told her that I advised her not to answer any questions whatever, upon my advice, and she stated she would rely upon my advice. I then informed him orally that she would not answer any questions or talk to anyone about the case, that the seizure of my client from the County Jail No. 3 was highly improper; that the seizure had interrupted a conference I then was having with her; that she was in the custody of the U. S. Marshal, an adjunct of the U. S. District Court, and not in that of the Special Assistant Attorneys General, the F.B.I., or of any other

U. S. officers, agents or agency; that it was an unwarranted interference by executive officers with the judicial branch of the U. S. Government; that I had not been notified in advance by any of them or anyone of her intended removal from the said jail for interrogation purposes or of any questions that were to be put to her; that their conduct in removing her from that jail to the office of the F.B.I. was an interference with the privileged relationship of client and attorney existing between Mrs. D'Aquino and me and an unlawful and outrageous interference with her constitutional rights; that I would not willingly, nor would she, as my client, willingly submit to any questioning or examination by agents of the F.B.I. or by Thomas De Wolfe or John Hogan, Special Assistant Attorneys General, or by any other officers or agents of the Government, except under protest and under duress; that the attempt, since I was informed by Mr. R. C. Kopriva and Mr. William Simon of the F.B.I. that said persons chiefly were responsible therefor, was a deliberate violation of the Fourth, Fifth and Sixth Amendments of the U. S. Constitution and also a violation of legal ethics and of the rules of courtesy existing between adverse counsel not to subject another lawyer's client to the indignity of examination in an adversary proceeding without my knowledge or consent, and without a request and notice first being given and that they were duty bound to proceed in an orderly legal fashion and not violate the ethics of the legal pro-

fession which are binding upon attorneys whether they are governmental attorneys or not. My client, upon my instructions, thereupon stated to Mr. Kopriva that, upon my advice, she would decline to answer any questions.

Thereupon, Mr. Kopriva said he would talk to the agents interested, left the room and returned and said the agents, whose names he refused to reveal to me, wanted her taken into their office for five (5) minutes, that she would be taken there and that I could not accompany her. I stated she would not go willingly but only under duress and under protest and would decline to answer any questions that might be put to her. At my request Mrs. D'Aquino repeated this statement to him. Mrs. D'Aquino thereupon was taken by him into an office down the corridor leading from the reception room and about three minutes later was returned by him and requested to be seated in a chair next to me. She stated to me in his presence that she had been taken into a room where William Tillman and John Eldon Dunn, agents of the F.B.I., and a stenographer were present and that she informed them that, upon my advice as her counsel, she declined to answer any questions and, although they propounded questions to her, she declined to answer, upon my advice, and thereupon had been returned to the reception room.

Mr. Simon thereupon said to me that the F.B.I. was obeying its orders in the matter, i.e., the or-

ders of said John Hogan and Thomas De Wolfe, Special Assistant Attorneys General. I repeated my protests to him. I stated to him and Mr. Kopriva that those who were guilty of having ordered my client removed from County Jail No. 3 and brought to the F.B.I. office for questioning without judicial process having issued thereon and without notice to me were violations of my client's constitutional and statutory rights; that it was an executive interference with the judicial branch of government and a usurpation of judicial power; that it was a breach of legal ethics by the persons responsible for and participating therein, or for ordering said things to be done if they were attorneys, and a breach of the ordinary rules of courtesy to which adversary counsel is entitled and that all those guilty and responsible for this misconduct had engaged in vicious reprehensible conduct. I informed him and Mr. Kopriva that I would make an issue of the matter and that if there were any further attempts on the part of any officers, lawyers or agents of the Government that I would make an issue of each violation in open court.

Thereupon Mr. Dunn, Mr. Eagan, my client and I left the room and got into Mr. Dunn's car and were driven down town where I got out at Kearny and Bush Streets and my client thereafter was returned to County Jail No. 3.

Thereafter, upon reaching my office, 1701 Mills Tower, San Francisco, I telephoned Market 1-2500

and the operator connected me with the telephone of said Thomas De Wolfe. He answered my call and I repeated the aforesaid occurrence to him and asked him why my client had been seized and removed under his and Mr. Hogan's instructions, in manner as aforesaid, and at the outset he stated he did not wish to discuss the matter with adverse counsel on the telephone or to make any commitments in the matter unless he had a colleague with him, that he would not promise that such actions would not continue. Because of his reluctance to discuss the matter over the telephone I informed him that I would call upon him and Mr. Hogan Monday, September 27, 1948, and that I would make an issue out of this outrageous conduct.

I protest, condemn and censure that forced seizure and removal of my client from County Jail No. 3 as a prohibited violation of the Fourth Amendment of the U. S. Constitution. I protest, condemn and censure that forced seizure and removal from that jail to the office of the F.B.I. as a willful, deliberate, wrongful and unauthorized interference by the said executive officers and agents with the judicial power of the U. S. District Court for the Northern District of California, Southern Division, in the absence of judicial process having issued thereon for any such purpose; I protest, condemn and censure that unlawful seizure and removal of my client to the office of the F.B.I. by said agents and agencies for secret questioning by them, without advance and formal notice to me and without

judicial process having issued thereon, as a direct and deliberate violation of her constitutional right not to be compelled to act as a witness against herself on the purported charge brought against her and as a violation of her constitutional rights secured to her by the provisions of the Fifth Amendment of the U. S. Constitution. I protest, condemn and censure that unlawful seizure and removal for secret questioning as a violation of the code of legal ethics by which attorneys, even attorneys for the U. S. Government, as officers of the U. S. District Court, are bound, and as a deliberately wrongful and wholly unjustified interference with the privileged and confidential relationship of client and attorney existing between Mrs. D'Aquino and me, and also as a distinctly discourteous action upon the part of each and every officer and agent of the Government guilty of such reprehensible conduct.

I brand such misconduct as being of a nature and character we have always believed to be shunned in the United States. We are not willing to follow or adopt methods employed by Hitler's Gestapo and Stalin's Ogpu in the violation of civil liberty and constitutional right.

No opprobrium connected with this matter attaches to the U. S. Attorney's office in this judicial district. Neither the Hon. Frank J. Hennessy, U. S. Attorney, nor any of his Assistant U. S. Attorneys, nor any member of their staff would ever have been guilty of any such similar outrageous misconduct

nor would they or any of them have participated in this outrage.

/s/ WAYNE M. COLLINS,
Attorney for Iva Toguri
D'Aquino.

Copies to:

Hon. Frank J. Hennessy,
U. S. Attorney.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO BE ADMITTED TO BAIL

1. Title 18 USCA, Section 597, as amended June 27, 1940, referring to bail in capital cases, provides as follows:

“Upon all arrests in criminal cases where the punishment may be death, bail shall be taken only by the Supreme Court or a district Court, or by a justice of the Supreme Court, a circuit judge, or a judge of a district court.”

2. Rule 46(a) of the Rules of Criminal Procedure for the District Courts of the United States, referring to the Right to Bail, provides in part, as follows:

“A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.”

3. Originally, bail in treason cases was not specifically provided for by statute but it was allowed by federal courts for special reasons in appropriate cases because admission to bail is an incident of the constitutional grant of judicial power and is an inherent right of that power. See *Hamilton v. U.S.*, 3 Dall. (3 U.S.) 17, 1 L. Ed. 490, decided in 1795 when the then existing statute (Act of April 30, 1790, 1 Stat. 112, Sec. 4) provided only the death penalty. The accused there, nevertheless, was admitted to bail.

And: *U.S. v. Jones* (1813) (CCPa) Fed. Case No. 15495, pg. 658, holding that one charged with piracy (a capital offense) who was suffering from the ravages of a disease which is injurious under confinement should be admitted to bail.

See also: *U.S. ex rel. Herbert v. Marshal* (1856), Fed. Case No. 15, 726a, where a defendant was indicted for murder and it was held that if it is clear to the court that a conviction for manslaughter might take place the accused should be admitted to bail.

Where a conviction is had for treason, the present rule is that the Court, in its discretion, may impose a minimum imprisonment of five years and a \$10,000 fine. See 18 USCA, Sec. 2.

In 1862, Congress enacted the Act of July 17, 1862, now 18 USCA, Sec. 2, which prescribes alternative punishments in treason cases and ever since then it has been the recognized rule that an accused

indicted on a charge of treason may be admitted to bail. The leading case first deciding this rule under the new statute is *Case of Jefferson Davis* (CCA Va.), (1867-1871), Fed. Case No. 3621a, at pages 78, 79, where bail was authorized.

4. In the great majority of the cases where defendants have been convicted of treason by our courts they have been sentenced to imprisonment. We find no cases where a death sentence, imposed by any of our courts, has been carried into execution. In each of the cases where death sentences were imposed by district courts and were not reversed by appellate courts, our Presidents have commuted the sentences or granted pardons. See *Cramer v. U.S.*, 325 U.S. 1, 24-25, 89, L. Ed. 1445, 1446, where Mr. Justice Jackson, delivering the Opinion of the Court states:

“In the century and a half of our national existence not one execution on a Federal treason conviction has taken place. Never before has this Court had occasion to review a conviction. In the few cases that have been prosecuted the treason clause has had its only judicial construction by individual Justices of this Court presiding at trials on circuit or by district or circuit judges. After constitutional requirements have been satisfied, and after juries have convicted and courts have sentenced, Presidents again and again have intervened to mitigate judicial severity or to pardon entirely.”

5. Inasmuch as the defendant, illegally and in violation of the principles and rules of international law, was seized by agents of the United States, acting under orders of the Attorney General, outside the jurisdiction of the United States in Tokyo, Japan, at the home and residence of the defendant and her husband on August 26, 1948, and thereafter forcibly was brought to San Francisco by agents of the United States, although defendant and her husband then were and ever since then have been and now are nationals and citizens of Portugal and were outside the jurisdiction of the United States and in Japan but within the exclusive jurisdiction of Portugal and entitled to the protection of the government of Portugal, she should be admitted to bail.

6. For the reason that the defendant has been unlawfully kidnapped, brought to this country, indicted and is indigent it is necessary for her constantly to consult with her attorney in the preparation of her defense and for her, jointly with her counsel, to interview in person many witnesses for her defense and whereas such interviews are impossible to conduct at County Jail No. 3 where defendant is confined and held incommunicado from all visitors except her father, sister and counsel, necessity and principles of international comity and justice require she should be admitted to reasonable bail for said purposes.

7. The Attorney General had neither constitutional nor statutory authority or jurisdiction to

seize the defendant in Japan and remove her therefrom to San Francisco, his authority and jurisdiction being limited to the continental United States and, in consequence, there was no jurisdiction to indict the defendant.

8. According to the law of the United States the defendant, accused by indictment herein, nevertheless, is presumed to be innocent of the charges therein preferred against her.

9. The foregoing demonstrate that the defendant has a substantial defense to the indictment on pure questions of law as well as on pure questions of fact and demonstrate the right to or the probability of a dismissal of the indictment or of an acquittal of the charges preferred against her.

For the said reasons we respectfully urge that the defendant be admitted to reasonable bail with such safeguards as to the Court shall seem sufficient.

Respectfully submitted,

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

[Endorsed]: Filed October 13, 1948.

District Court of the United States, Northern District of California, Southern Division

At A Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room

thereof, in the City and County of San Francisco, on Thursday, the 14th day of October, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Louis E. Goodman,
District Judge, sitting for and on behalf
of Honorable Michael J. Roche, District
Judge.

[Title of Cause.]

ORDER

(Minute order that defendant's motion for bail be denied and providing that marshal provide suitable place of confinement where defendant will have full opportunity to interview witnesses and consult with counsel.)

This case came on regularly this day for hearing of motion for bail of defendant, Iva Ikuko Toguri D'Aquino, who was present in the custody of the United States Marshal and with her attorney, Wayne Collins, Esq. Hon. Frank J. Hennessy, United States Attorney, and Tom De Wolfe, Esq., Special Assistant to the Attorney General, were present on behalf of the United States.

After hearing Mr. Collins and Mr. De Wolfe, it is Ordered that said motion that defendant be admitted to bail be denied. Further ordered that the United States Marshal provide suitable place of confinement where defendant shall have full opportunity to interview witnesses on her behalf and her attorney.

[Title of District Court and Cause.]

DEMAND FOR BILL OF PARTICULARS

Defendant demands a Bill of Particulars, failing which defendant will apply to the court for an order directing the plaintiff or the U. S. Attorney, attorney for plaintiff, to furnish defendant a Bill of Particulars, Acts, Facts and Things specified in the indictment in the above-entitled cause, as follows:

1. A statement of the particular place or places to which the word "elsewhere" on the last line of paragraph 2 on line 13 of page 2 of the indictment refers.

2. A statement of the particular place or places to which the word "elsewhere" in paragraph 3(a) on line 25 of page 2 of the indictment refers.

3. A statement of the particular place or places to which the word "elsewhere" in paragraph 3(b) on line 29 of page 2 of the indictment refers.

4. A statement of the respect or respects in which the Broadcasting Corporation of Japan was controlled by the Imperial Japanese Government, as alleged in paragraph 3(a) on page 2 of the indictment, or the meaning of that word as therein used.

5. A statement whether or not the alleged adherence of the defendant and the giving of aid and comfort to the enemies specified generally in paragraph 3 on pages 2 and 3 of the indictment actually

had the effect or result of aiding and comforting the enemies of the United States and, if so, in what respect or respects.

6. A statement of the precise or approximate time or times the defendant worked, announced and wrote radio script as alleged in paragraph 3(a) on page 2 of the indictment.

7. A statement of the nature, character and contents, in substance or effect, of the statements made by defendant as a radio speaker, radio announcer and broadcaster of recorded music alleged in paragraph 3(a) on page 2 of the indictment.

8. A statement of the nature, character and contents, in substance or effect, of the radio script prepared or composed by the defendant and of her talks and announcements and announcements of radio script alleged in paragraph 3(a) on page 2 of the indictment.

9. A statement of the nature and contents, in substance or effect, of the announcements and introductions made by the defendant of musical recordings and talks for broadcast by radio from Japan alleged in paragraph 3(a) on page 2 of the indictment.

10. A statement of the name of the "another person," mentioned in overt act No. 1 in paragraph 1 on page 3 of the indictment, with whom the defendant discussed the proposed participation of defendant in the radio broadcasting program therein mentioned.

11. A statement of the precise or approximate time when overt act No. 1, mentioned in paragraph 1 on page 3 of the indictment, took place together with a statement of the words spoken by each, in substance or effect, in the discussion therein mentioned and the nature of the discussion.

12. A statement of the precise or approximate time when overt act No. 2, mentioned in paragraph 2 on page 3 of the indictment, took place, together with the names of the employees of the Broadcasting Corporation of Japan with whom the defendant is alleged to have had the discussion therein alleged, together with a statement of the words spoken by each of them and defendant, in substance or effect.

13. A statement of the precise or approximate time when overt act No. 3, mentioned in paragraph 2 on page 4 of the indictment, took place, together with the words spoken by defendant into the microphone, in substance or effect, and the nature of the statements made.

14. A statement of the precise or approximate time when overt act No. 4, mentioned in paragraph 4 on page 4 of the indictment, took place, together with the words spoken by defendant, in substance or effect, into the microphone and also a statement, in substance or effect, of the precise reference alleged therein to have been made by her concerning enemies of Japan.

15. A statement of the precise or approximate

time when overt No. 5, mentioned in paragraph 5 on page 4 of the indictment, took place, together with the nature and contents, in substance and effect, of the script prepared for subsequent radio broadcast concerning the loss of ships, the ships to which it referred and the precise statement which was made concerning the loss of ships, either in substance or effect.

16. A statement of the precise or approximate time when overt act No. 6, mentioned in paragraph 6 on page 4 of the indictment, took place, together with the words which were spoken, in substance or effect, concerning the loss of ships, together with a statement of what ships the statement referred to.

17. A statement of the precise or approximate time when overt act No. 7, mentioned in paragraph 7 on page 4 of the indictment, took place, together with a statement of the nature and contents, in substance or effect, of the radio script therein alleged to have been prepared.

18. A statement of the precise or approximate time when overt act No. 8, mentioned in paragraph 8 on page 4 of the indictment, took place, together with the words, in substance or effect, which were spoken into the microphone and the names of each of the persons who engaged in the entertainment dialogue therein mentioned and the words spoken, in substance or effect, by any of the participants in the entertainment dialogue therein mentioned.

In case of your neglect or refusal so to furnish said particulars to said defendant, defendant will

apply to the court for an order directing compliance with this demand.

Dated: October 27, 1948.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

State of California,
City and County of San Francisco—ss.

Wayne M. Collins, being first duly sworn, deposes and says: that he is attorney of record for Iva Ikuko Toguri D'Aquino, defendant herein; that he has read the foregoing demand for bill of particulars and knows the contents thereof; that he verily believes the fact to be that the defendant cannot safely go to trial on the indictment herein without the details and particulars of the matters requested in the foregoing demand for a bill of particulars and that said details and particulars are essential and necessary to inform defendant of the nature of the accusation against her with sufficient precision to enable her to prepare for trial, to prevent being taken by surprise thereat and to permit her to plead the conclusion thereof in bar of another prosecution on the same charge.

/s/ WAYNE M. COLLINS.

Subscribed and sworn to before me this 27th day of October, 1948.

[Seal] /s/ JANE M. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco, State of California.

Receipt of copy acknowledged.

[Endorsed]: Filed October 27, 1948.

[Title of District Court and Cause.]

DEMAND FOR DISCOVERY AND INSPECTION

Defendant demands the right to inspect and copy or photograph the hereinafter designated papers, documents or tangible objects, obtained from or belonging to the defendant or obtained from others by seizure or process, which said papers, documents or tangible objects, hereinafter specified, are material to the preparation of defendant's defense, viz:

(1) The statement, purporting to be made up, in part, of an oral statement of the defendant obtained from her and taken down in pencil by Sergeant Page (Paige?) of the Counter Intelligence Corps of the U. S. Eighth Army in Japan, acting under the orders of Brigadier General Richard Thorpe and Lt. Col. Turner of the said Corps and Army at the Yokohama New Grand Hotel, Yokohama, Japan, on or about September 6, 1945, which purports to set forth a narration of defendant's residence, employment, marriage to Philip (Felipe) J. D'Aquino, a national, citizen and domiciliary of Portugal residing in Japan, and her activities in Japan from July, 1941, to the date thereof, the defendant being at said time and place held under restraint by said army authorities.

(2) The picture or pictures of the defendant and General Eichelberger, U.S.A., taken at the order of said General at the Yokohama New Grand Hotel,

Yokohama, Japan, on or about September 6, 1945.

(3) The motion picture film and sound recording (sound film) synchronized therewith made of the defendant at Radio Tokyo, Tokyo, Japan, on or about October 1, 1945, on orders of the Signal Corps of the U. S. Eighth Army in Japan, and the radio script, consisting of several pages, then and there prepared for the same by a Second Lieutenant, U. S. Army, whose name was Cadeson or Kadeson or a name similarly pronounced, which defendant, by said person, was ordered to read into said sound film and thereafter at said time and place was ordered signed by defendant in her maiden name Iva I. Toguri and also, in quotes, "Tokyo Rose," together with several other pages of radio script then and there obtained by said person from the defendant.

(4) The typewritten, signed and witnessed statement, purporting to be made up, in part, of an oral statement obtained from the defendant and drawn up from pencil or ink notes made by a Mr. Hetrick who was in a U. S. Army uniform and either a member of the Counter Intelligence Corps of the U. S. Eighth Army in Japan, or attached thereto, or a member of the U. S. Department of Justice or a member of the U. S. Federal Bureau of Investigation, at Sugamo Prison in Tokyo, Japan, on or about December, 1945, the defendant then and there being held under restraint and imprisoned by U. S. authority which restraint and imprisonment commenced on October 17, 1945, and continued until

October 25, 1946, when defendant was released therefrom, together with the said notes, the said statement purporting to set forth a narration of defendant's residence, marriage to Philip (Felipe) J. D'Aquino, a national, citizen and *domiliary* of Portugal residing in Japan, and her employment and activities in Japan from July 1941, to the date thereof.

(5) The typewritten, signed and witnessed statement, purporting to be made up, in part, of an oral statement obtained from the defendant by and drawn up by Fred Tillman, special agent of the U. S. Federal Bureau of Investigation, from his notes, he then being in U. S. Army uniform and attached to the Counter Intelligence Corps or the U. S. Eighth Army in Japan, and thereafter signed by defendant at Sugamo Prison, Tokyo, Japan, on or about April, 1946, together with the original notes thereof, the defendant being held in restraint and imprisoned at said Sugamo Prison at said times by the United States, said statement purporting to narrate the history of defendant's residence, marriage and employment in Japan from July, 1941, to the date thereof.

(6) The photostat copy of notes purporting to be made by Clark Lee and purporting to be or to relate to an interview of the defendant by Harry Brundidge and Clark Lee, newspaper correspondents attached to the U. S. Eighth Army in Tokyo, Japan, purporting to have taken place on or about

September 2, 1945, at the Imperial Hotel in Tokyo, Japan, said photostat copy of notes being initialed "ID'A" on each page thereof and signed in defendant's name on or about March 26, 1948, at the building of General Headquarters of the United States Army, Tokyo, Japan, to which defendant forcibly was brought by agents of the United States from her home and sick bed in Tokyo, Japan, the said Harry Brundidge and one, John Hogan, a special assistant to the U. S. Attorney General, being present at said time and place, said photostat copy of notes purporting to relate to the history and activities of defendant in Japan from 1941 to the date thereof.

(7) The package of typewriter sized foolscap paper, consisting of a series or number of original and perhaps, a number of carbon copies, of typewritten pages or script, approximately one-half inch thick, obtained from the defendant by agents of the Counter Intelligence Corps of the U. S. Eighth Army in Japan, namely, Sergeant Page (Paige?) for Lt. Col. Turner at Yokohama, Japan, on or about September 15, 1945, said package of papers thereafter being in the possession of Fred Tillman, special agent of the U. S. Federal Bureau of Investigation, who, on or about April, 1946, at Sugamo Prison, Tokyo, Japan, obtained defendant's initialing of each page thereof while she was held in restraint and duress at said prison by United States authority, said papers in said package of

papers being in the nature of radio script purporting to have been prepared for broadcast from Radio Tokyo.

(8) Any and all phonographic tape, wire, electrical, magnetic, sound or other types of records, recordings or transcriptions made, manufactured, received or intercepted, and in the possession of or available to plaintiff, of any and all of the Zero Hour programs of Radio Tokyo or radio station JOAK on which the prosecution asserts or will assert at any trial herein that the defendant or person designated or known or referred to as "Orphan Ann," "Orphan Annie" or "Tokyo Rose" spoke, talked, recorded, announced or broadcasted any statement, matter or thing, together with any and all of the musical records or pieces or recordings thereof which the prosecution asserts or will assert at any trial herein that such person played, announced or broadcast thereon, covering the period of time from or about November 1, 1943, to and including August 15, 1945.

(9) Any and all recordings of the defendant's voice made on or about January 6, 1946, at Radio Tokyo, in Tokyo, Japan, obtained from the defendant by order of the Counter Intelligence Corps of the U. S. Eighth Army in Japan, which the prosecution asserts or will assert at any trial herein to be a recording of defendant's voice.

(10) Any and all recordings of the defendant's voice made on or about February, 1948, at Radio

Tokyo, in Tokyo, Japan, obtained from the defendant by order of the Counter Intelligence Corps of the U. S. Eighth Army in Japan, which the prosecution asserts or will assert at any trial herein to be a recording of defendant's voice.

(11) Several pages of handwritten script on typewriter sized foolscap paper, the contents purporting to be radio script, obtained from the defendant at Yokohama Prison, Yokohama, Japan, by Col. Robert Hardy, U.S.A., officer in charge of that prison, on or about October 17, 1945, which purports to be radio script prepared for broadcast.

(12) Any and all other papers, documents, records and things the United States or its agents obtained, if any, from the defendant, her husband or her home and residence situated at No. 396 Ikejiri Machi, Setagaya Ku, Tokyo, Japan, during the enforced absence therefrom of the defendant, which has or may have any bearing on any issues involved in this cause whether or not the plaintiff or its agents intend to use or offer any such evidence at any trial of the issues herein.

Inspection of each and all of the above-mentioned statements, documents and things, obtained from defendant as above stated, are or may be material to the preparation of defendant's defense to the indictment herein and are in the possession of or available to the plaintiff, or its agents, representatives and attorney.

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

State of California,
City and County of San Francisco—ss.

Wayne M. Collins being first duly sworn deposes and says: that he is attorney of record for Iva Ikuko Toguri D'Aquino, defendant herein; that he has read the foregoing Demand for Discovery and Inspection and knows the contents thereof; that as such attorney he has investigated the facts concerning each of the twelve statements, documents and records mentioned therein; that he verily believes the facts to be true which therein are recited or narrated in said motion; that each of the items therein sought to be inspected, examined and copied or photographed are, for the reasons therein stated, material to the preparation of defendant's defense to the charges brought against her in the indictment in said cause and he verily believes that defendant's request and motion for discovery and inspection thereof is reasonable.

/s/ WAYNE M. COLLINS.

Subscribed and sworn to before me this 3rd day of November, 1948.

[Seal] /s/ JANE M. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco, State of California.

Receipt of copy acknowledged.

[Endorsed]: Filed November 3, 1948.

[Title of District Court and Cause.]

DEMAND FOR ADDITIONAL
BILL OF PARTICULARS

Defendant demands an Additional Bill of Particulars, failing which defendant will apply to the court for an order directing the plaintiff or the U. S. Attorney, attorney for plaintiff, to furnish defendant an Additional Bill of Particulars, Acts, Facts and Things specified in the indictment in the above-entitled cause, as follows:

19. A statement of the times and places where defendant was arrested in Japan and confined to prison by agents of the United States, and thereafter released therefrom, the periods of time of said imprisonments, the authority and purpose for the said arrests and commitments to imprisonment and discharges therefrom, and a statement of the purpose for which and the authority under which defendant was arrested in Japan and brought to San Francisco in this Federal Judicial District shortly prior to the date of the return of the indictment herein, as alleged in the final paragraph on page 4 of the indictment, and also a statement whether or not each of her said arrests and imprisonments and releases therefrom, and her removal from Japan to San Francisco, and each of said things, were done with the consent and authority of the Allied Powers,

the government of Portugal, and the government of Japan or of any of said sovereign powers.

20. A statement whether the employment of defendant as a radio operator, radio announcer, radio script writer and broadcaster of recorded music, as alleged in paragraph 3(a) of the indictment, was or was not in a capacity for which only Japanese nationals were eligible.

21. A statement of the facts upon which are based the conclusions in the indictment, in paragraph 1 on page 1, paragraph 2 on page 2 and paragraph on top of page 4, that defendant is a citizen of the United States and a person owing allegiance to the United States.

22. A statement whether or not the defendant at Tokyo, Japan, was united in marriage to her now husband, Felipe J. D'Aquino, on April 19, 1945, who then was and ever since then has been and now is a national, citizen and domiciliary of Portugal residing in Japan.

23. A statement whether or not the United States heretofore, within the past three years, arrested defendant thrice or at all in Japan on the same accusation of treason as charged in the indictment herein and imprisoned her thrice and thereafter, acquitted her of the charges or convicted her thereon or sentenced or imprisoned her thereon and thereafter liberated her from such imprisonment at any time and, if so, when.

In case of your neglect or refusal so to furnish said particulars to said defendant, defendant will apply to the court for an order directing compliance with this demand.

Dated: November 3, 1948.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

State of California,
City and County of San Francisco—ss.

Wayne M. Collins, being first duly sworn, deposes and says: that he is attorney of record for Iva Ikuko Toguri D'Aquino, defendant herein; that he has read the foregoing demand for an additional bill of particulars and knows the contents thereof; that he verily believes the fact to be that the defendant cannot safely go to trial on the indictment herein without the details and particulars of the matters requested in the foregoing demand for an additional bill of particulars and that said details and particulars are essential and necessary to inform defendant of the nature of the accusation against her with sufficient precision to enable her to prepare for trial, to prevent being taken by surprise thereat and to permit her to plead the con-

clusion thereof in bar of another prosecution on the same charge.

/s/ WAYNE M. COLLINS.

Subscribed and sworn to before me this 3rd day of November, 1948.

[Seal] /s/ JANE M. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco, State of California.

Receipt of copy acknowledged.

[Endorsed]: Filed November 3, 1948.

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE

To Hon. Frank J. Hennessy, U. S. Attorney, Attorney for Plaintiff.

You will please take notice that on Monday, November 22, 1948, at the hour of 10 o'clock a.m. of said day, or so soon thereafter as counsel can be heard, the defendant will bring on for hearing the within Motion to Strike upon the grounds and for the reasons set forth therein.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Receipt of copy acknowledged.

[Title of District Court and Cause.]

MOTION TO STRIKE

The defendant moves the court for its order striking the whole of the indictment herein and, if the whole be not ordered stricken, she moves the court to strike the following matter therefrom, to wit:

1. The phrase “knowingly, wilfully, unlawfully, feloniously, intentionally, traitorously and treasonably” appearing in paragraph 2 on lines 5 and 6 of page 2 thereof, the same being conclusions of the pleader;

2. The phrase “and the officials and employees thereof” appearing in paragraph 2 on line 11 of page 2 thereof;

3. The words “within the United States, Japan and elsewhere” appearing in paragraph 2 on lines 12 and 13 of page 2 thereof;

4. The word “elsewhere” appearing in paragraph 3(a) on line 25 of page 2 thereof;

5. The word “elsewhere” appearing in paragraph 3(b) on line 29 of page 2 thereof;

6. The phrase “and their Allies in the Pacific Ocean area” appearing in paragraph 3(a) on lines 24 and 25 on page 2 thereof;

7. The words “and its Allies” in paragraph 3 on line 1 of page 3 thereof;

8. The words "and Allied" in paragraph 3 on line 1 of page 3 thereof;

9. The words "and Allied" appearing in paragraph 3 on line 2 of page 3 thereof;

10. The words "and Allied" appearing in paragraph 3 on line 4 of page 3 thereof;

11. The words "and Allied" appearing in paragraph 3 on lines 4 and 5 of page 3 thereof;

12. The phrase "knowingly, wilfully, unlawfully, feloniously, traitorously and treasonably" in paragraph 4 on lines 14 and 15 of page thereof;

13. The whole of paragraph 2 thereof;

14. The whole of paragraph 3, 3(a) and 3(b) thereof;

15. The whole of paragraph 4 thereof;

16. The whole of paragraph 4, including its subdivisions 1, 2, 3, 4, 5, 6, 7 and 8;

17. The whole of said indictment.

Said motion will be made on the indictment, this motion, notice hereof, and upon all the pleadings, papers, documents and files herein.

The said matter in said indictment and the said indictment will be sought to be stricken upon the grounds that said same are (1) sham, (2) irrelevant, (3) redundant, (4) immaterial, (5) superfluous, (6) repetitious, (7) unnecessary, (8) multifarious and (9) conclusions.

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO STRIKE

Under Art. III, Sec. 3, Cl. 1, treason consists only of levying war against the United States or in adhering to the enemies of the United States, giving them aid and comfort, and, in consequence, can be committed only against the United States.

Actions against Allies, that is to say, foreign sovereigns cannot constitute treason against the United States.

“Constructive” treason is not recognized by American law. See *Shortridge v. Macon*, 22 Fed. Cas. No. 12,812, and also *U.S. v. Burr*, 25 Fed. Cas. No. 14,692a.

In consequence, the reference to the Allies made in the indictment are irrevelant and surplusage.

Respectfully submitted,

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

[Endorsed]: Filed November 15, 1948.

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS
INDICTMENT

To Hon. Frank J. Hennessy, U. S. Attorney, Attorney for Plaintiff.

You will please take notice that on Monday, No-

vember 22, 1948, at the hour of 10 o'clock a.m. of said day, or so soon thereafter as counsel can be heard, the defendant will move the above-entitled Court to dismiss the indictment herein upon the grounds and for the reasons set forth in the within Motion to Dismiss.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

MOTION TO DISMISS INDICTMENT

The defendant moves to quash and dismiss the indictment upon each and all of the following grounds and for the following reasons, to wit:

(1) The indictment fails to state facts sufficient to constitute an offense against the United States for failing to be a plain, concise and definite written statement of the offense charged, being vague, indefinite and uncertain in material respects in that the charges are so general that they do not inform the defendant of the acts of which she is accused with sufficient precision and description to enable her to prepare her defense thereto.

(2) Inasmuch as the indictment purports to plead treason in broad and general terms, that is to say, by pleading adherence to enemies through giving them aid and comfort, in paragraphs 2 and 3 of the indictment, without, however, specifying the

particulars of that adherence, aid and comfort and then, following those general allegations pleads special overt acts, in paragraph 4 thereof, which are vague, indefinite and uncertain on their face but are innocent and ineffective acts, as pleaded, and these special allegations limit and control the general allegations of treason, the indictment fails to state facts sufficient to constitute an offense against the United States.

(3) The court has no jurisdiction over the person of the defendant.

(4) The court has no jurisdiction over the person of the defendant because neither the Constitution nor Congress has authorized the seizure of the defendant at her residence in Japan or her removal therefrom to San Francisco.

(5) The court has no jurisdiction over the defendant because she was seized illegally at her residence in Japan by agents of the U. S. and brought to San Francisco in violation of the sovereignty of Portugal, of which country she is a national, citizen and domiciliary, and in violation of the sovereignty of Japan where she resides and hence also in contravention of principles of international law.

(6) The court has no jurisdiction over the offense alleged in the indictment which therein is stated to have taken place outside the jurisdiction of the United States on foreign soil by defendant as a resident of Japan.

(7) The court has no jurisdiction of the offense alleged in the indictment because the defendant was seized illegally at her residence in Japan and forcibly brought to San Francisco by agents of the United States without the authority and consent of the Government of Portugal and against the sovereignty of Portugal.

(8) The court has no jurisdiction of the offense alleged in the indictment because the defendant was seized illegally at her residence in Japan and forcibly brought to San Francisco by agents of the United States without the authority and consent of the Government of Japan and against the sovereignty of Japan.

(9) Neither this judicial district nor this court is the proper venue for the trial of the offense alleged in the indictment because neither the Constitution nor Congress has authorized any place whatever as the place of trial on treason charges alleged to have been committed in Japan by a Portuguese national or any other person residing within the geographical boundaries of Japan.

(10) The court has no jurisdiction of the offense alleged in the indictment because neither the Constitution nor Congress has authorized or designated any place whatever as the place of trial on treason charges alleged to have been committed in Japan by a Portuguese national or any other person residing within the geographical boundaries of Japan.

(11) The court has no jurisdiction of the offense alleged in the indictment because the United States has no extraterritorial jurisdiction extending over a Portuguese national or any other person residing within the geographical boundaries of Japan.

(12) The indictment is duplicitous for containing an improper joinder of several separate and distinct purported offenses which have not been separately stated.

(13) Neither the Attorney General nor the United States had constitutional or statutory authority or jurisdiction to seize the defendant at her place of residence in Japan and remove her therefrom to San Francisco; such authority and jurisdiction being limited to the continental United States and its possessions and in consequence, there was no jurisdiction lodged in the grand jury to indict the defendant and no jurisdiction exists in this court either over her or over the purported offense alleged in the indictment.

(14) Jurisdiction over the defendant is lodged in the War Department or the military commissions, tribunals or war courts set up by the U. S. and its Allies in Japan, to the exclusion of the Attorney General and this Court.

(15) Jurisdiction of the offense alleged in the indictment is lodged in the War Department or the military commissions, tribunals or war courts set up by the U. S. and its Allies in Japan, to the exclusion of the Attorney General and this Court.

(16) Jurisdiction over the defendant, if any exists, is lodged exclusively in the Government of Portugal.

(17) Jurisdiction over the offense, if any exists, is lodged exclusively in the Government of Portugal.

(18) Jurisdiction over the defendant, if any exists, is lodged exclusively in the Government of Japan.

(19) Jurisdiction over the offense, if any exists, is lodged exclusively in the Government of Japan.

(20) The indictment fails to state facts sufficient to constitute an offense against the United States.

(21) The indictment fails to state facts sufficient to constitute an offense against the United States for the reason that the defendant is a national, citizen and domiciliary of Portugal whose residence is in Japan.

(22) The indictment fails to state facts sufficient to constitute an offense against the United States for the reason that the defendant, by her marriage, in Japan, to a national, citizen and domiciliary of Portugal, resident in Japan, thereby lost her prior nationality, citizenship, domicile and residence and acquired the Portuguese nationality, citizenship and domicile of her husband and also his residence in Japan.

(23) The indictment fails to state facts sufficient to constitute an offense against the United States for the reason that the defendant's marriage on April 19, 1945, in Tokyo, Japan, to a national, citizen and domiciliary of Portugal, residing in Japan, constituted an act of expatriation and her naturalization as a Portuguese whereby she lost her prior nationality, citizenship, domicile and residence status and acquired and still has that of her husband.

(24) The court has no jurisdiction over the person of the defendant because she was seized illegally at her residence in Japan and forcibly brought to San Francisco by agents of the U. S. without the authority and consent of the Allied Powers in Japan having been obtained therefor.

(25) The court has no jurisdiction of the offense alleged in the indictment because the defendant was seized illegally in Japan and forcibly brought to San Francisco by agents of the U. S. without the authority and consent of the Allied Powers in Japan having been obtained therefor.

(26) The indictment fails to state facts sufficient to constitute an offense against the United States inasmuch as it alleges the employment of defendant as a radio speaker, radio announcer, radio script writer and broadcaster of recorded music, an occupation for which only Japanese nationals were eligible which, by operation of our law, constitutes an act of expatriation whereby she lost her

prior nationality and hence the court has neither jurisdiction over the defendant nor of the cause.

(27) The cause is barred by the limitation against prosecution, trial and punishment provisions of Title 18 USCA, Section 582, which provides that "No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046 (section 584 of this title), unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed," and by the provisions of Title 18 USCA, Sec. 3282, which set up a limitation against prosecution, trial and punishment for offenses not capital unless the indictment is found within three years next after such offense shall have been committed.

(28) The cause is barred by the limitation of prosecution, trial and punishment provisions of Title 18, USCA, Section 581, which provides that "No person shall be prosecuted, tried, or punished for treason or other capital offense, wilful murder excepted, unless the indictment is found within three years next after such treason or capital offense is done or committed," said statute not being repealed by the Act of Aug. 4, 1939, c. 419, sec. 1, 53 Stat. 1198, codified as Title 18 USCA, Secs. 581a and 581b, and Sec. 3281, effective Sept. 1, 1948, which authorize an indictment for any offense punishable by death to be found at any time without regard to any statute of limitations but, clearly, does not authorize either a prosecution, trial or punishment for treason committed three years before

indictment found, treason not necessarily being an offense punishable by death, those new sections merely authorizing a grand jury to return an indictment in such a case.

(29) The court has no jurisdiction over the person of the defendant inasmuch as it appears from the indictment itself that the alleged offense was committed outside the boundaries and jurisdiction of the United States and its possessions, to wit, in Japan by a resident of Japan.

(30) The court has no jurisdiction over the cause inasmuch as it appears from the indictment that the alleged offense was committed outside the boundaries and jurisdiction of the United States and its possessions, to wit, in Japan by a resident of Japan.

(31) The indictment fails to state facts sufficient to constitute an offense against the United States because it nowhere therein alleges that any acts, words or conduct of the defendant constituted a completed crime of treason.

(32) The indictment fails to state facts sufficient to constitute an offense against the United States for failing to be a plain, concise and definite written statement of the offense charged in that it is vague, indefinite and uncertain in material respects and, in consequence, fails to inform defendant of the nature of the accusation against her sufficient to enable her to present her defense thereto, in the following particulars, to wit:

(a) It does not allege any acts of treason by adherence to the enemies through giving them aid and comfort by specifying the particulars thereof and, inasmuch as the special overt acts pleaded in paragraph 4 of the indictment limit and control the general accusation, pleaded in paragraphs 2 and 3 thereof, and these special overt acts are innocent and ineffective on their face to sustain a charge of treason it cannot be ascertained therefrom what acts or conduct, if any, constitute the treason and are complained of;

(b) It is not alleged therein and it cannot be ascertained therefrom what particular place or places the word "elsewhere" on the last line of paragraph 2 on line 13 of page 2 of the indictment, the word "elsewhere" in paragraph 3(a) on line 25 of page 2 thereof and the word "elsewhere" in paragraph 3(b) on line 29 of page 2 thereof refers;

(c) It is not alleged therein and it cannot be ascertained therefrom what the word "controlled" in paragraph 3(a) on line 20 of page 2 of the indictment signifies or means in what mode and manner such control was exercised;

(d) It is not alleged therein and it cannot be ascertained therefrom what were the precise or approximate time or times the defendant worked, announced and wrote radio script, as alleged in paragraph 3(a) on page 2 of the indictment or what period of time such work, announcing and writing covered or the nature thereof;

(e) It is not alleged therein and it cannot be ascertained therefrom what were the nature, character and contents of the statements made by defendant as a radio speaker, radio announcer and broadcaster of recorded music alleged in paragraph 3(a) on page 2 of the indictment;

(f) It is not alleged therein and it cannot be ascertained therefrom what was the character and contents of the radio script prepared or composed by the defendant or of her talks and announcements, and announcements of radio script, alleged in paragraph 3(a) on page 2 of the indictment;

(g) It is not alleged therein and it cannot be ascertained therefrom what was the nature and contents of the announcements and introductions made by the defendant of the musical recordings and talks for broadcast by radio from Japan alleged in paragraph 3(a) of the indictment;

(h) It is not alleged therein and it cannot be ascertained therefrom what was or is the name of the "another person" mentioned in overt act No. 1 in paragraph 1 on page 3 of the indictment with whom the defendant discussed the proposed participation of defendant in the radio broadcasting program therein mentioned;

(i) It neither alleges nor can it be ascertained therefrom whether the employment of the defendant as a radio operator, radio announcer, script writer and broadcaster of recorded music alleged in paragraph 3(a) of the indictment was or was not in a capacity for which only Japanese nationals or subjects were eligible;

(j) It neither alleges nor can it be ascertained therefrom why or how the defendant whose name alone demonstrates her to be a foreigner married to a foreign national and brought here from Japan could be a citizen of this country;

(k) It neither alleges nor can it be ascertained therefrom why and under what authority the defendant was first brought, shortly prior to the date of the return of the indictment, into this federal judicial district, as alleged in the concluding paragraph of the indictment;

(l) It neither alleges, charges nor informs defendant of the precise times when each of the acts or conduct complained of took place;

(m) It neither alleges, charges nor informs defendant of any precise or specific acts, words or conduct of the defendant which constitute an offense against the United States;

(n) It doesn't charge that any offense was committed by the defendant within the United States, its territories, possessions or jurisdiction;

(o) It neither alleges nor can it be ascertained therefrom whether the acts or conduct therein mentioned actually had any treasonable effect or result upon any person or entity whatever;

(p) It doesn't allege and it cannot be ascertained therefrom whether the acts therein alleged to be overt acts, or any of them, had any treasonable effect or result upon any person or entity whomsoever;

(q) It does not allege and it cannot be ascer-

tained therefrom when the overt act alleged in paragraph 1 on page 3 thereof took place or the name of the other person who participated in the discussion therein mentioned or the words spoken, in substance or effect, nor the nature of the alleged discussion;

(r) It does not allege and it cannot be ascertained therefrom the time when the overt act alleged in paragraph 2 on page 3 thereof took place or the names of the employees with whom the alleged discussion was had or the words spoken, in substance or effect, or the nature of the alleged discussion;

(s) It does not allege and it cannot be ascertained therefrom the time when the overt act alleged in paragraph 3 on page 4 thereof took place or the words spoken into the microphone, in substance or effect, or the nature of the statements made;

(t) It does not allege and it cannot be ascertained therefrom the time when the overt act alleged in paragraph 4 on page 4 thereof took place or the words spoken, in substance or effect, into the microphone, or what was the precise reference made concerning enemies of Japan;

(u) It does not allege and it cannot be ascertained therefrom the time when the overt act alleged in paragraph 5 on page 4 thereof took place or what was the nature and contents, in substance or effect, of the script prepared for subsequent radio broadcast concerning the loss of ships or what ships it refers to;

(v) It does not allege and it cannot be ascertained therefrom the time when the overt act alleged in paragraph 6 on page 4 thereof took place or what words were spoken, in substance or effect, concerning the loss of ships or what ships it refers to;

(w) It does not allege and it cannot be ascertained therefrom the time when the overt act alleged in paragraph 7 on page 4 thereof took place or what was the nature and contents, in substance or effect, of the radio script therein alleged to have been prepared;

(x) It does not allege and it cannot be ascertained therefrom the time when the overt act alleged in paragraph 8 on page 4 thereof took place or what words, in substance or effect, were spoken into the microphone or the names of the persons who engaged in the entertainment dialogue therein mentioned or the substance and effect of the words spoken by any of them in the entertainment dialogue.

This motion will be made and based upon the indictment, notice of this motion, points and authorities in support thereof, affidavit annexed to the motion to admit defendant to bail, and all papers, records, documents and files herein and any evidence which may be adduced in support of this motion.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

(Copy)

Exhibit A

Warrant of Arrest

In the Name and Authority of

The Supreme Commander for the Allied Powers
To: The Provost Marshal, General Headquarters,
Far East Command, APO 500:

1. You are directed to arrest, and deliver forthwith to the Sugamo Prison, the following described person:

- a) Ikuko (Iva) Toguri D'Aquino
- b) Residing at 396 Ikijiri-machi, Setagaya-ku, Tokyo, Japan
- c) Age 32 years.

2. Upon complaint and sufficient information made to me by the Department of Justice, United States Government, as contained in Radio WCL 20431, from the Adjutant General, Department of the Army, dated 25 August, 1948, the person described in paragraph 1 above is suspected of having committed the following crime:

Treasonable conduct against the United States Government during World War II.

3. You will make known to the person arrested, in her native language, the contents of this document.

4. Authority to arrest under this warrant expires 30 days from date herein.

Place: Tokyo, Japan.

Date: 26 August, 1948.

W. A. BEIDERLINDEN,

Brigadier General, United States Army, Assistant
Chief of Staff, G-1, General Headquarters, Far
East Command, APO 500.

(Copy)

Portuguese Consulate

Tokyo

To whom it may concern,

This is to certify that, Mr. Filipe Jairus
D'Aquino, born in Yokohama on 26th March, 1921,
married to Mrs. Ikuko Toguri d'Aquino, is a Por-
tuguese national duly registered in this Consulate.

Portuguese Consulate in Tokyo, 4th November,
1948.

/s/ J. A. ABRANCHES PINTO,
J. A. ABRANCHES PINTO.

(Rubber Stamp) Consulado De Portugal Toquio.

(Rubber Stamp) Pagou ao cambio de 11.00 a
quantia de Y275.00 (Es. 25\$00) segundo o numero
26° da tabela, ficando esta importancia lancada no
livro de receita sob o Numero 259.

Toquio, 4 de Novembro, 1948.

/s/ A. PINTO.

(Stamp) Republica Portuguesa 25\$00 Servico
Consular.

(Rubber Stamp) Consulado De Portugal Toquio.

(Translation)

(Rubber Stamp): Consulate of Portugal, Tokyo.

(Coat of Arms)

Consulate of Portugal

Tokyo

Service of the Portuguese Republic

Certificate of Consular Registry No. 190

The Consul of the Portuguese Republic in Tokyo makes it known that Filipe Jairus d'Aquino, marital status, married, profession, newspaperman, son of Jose Filomeno d'Aquino and Maria d'Aquino, born on the 26th day of March, 1921, a native of Yokohama is a Portuguese citizen and is duly registered in the Register of this Consulate under No. 5 of Book No. 1 of inscriptions.

His last residence was Yokohama and he arrived on (date in blank) at this consular district.

He resides in Tokyo, Setagaya-ku, 396 Ikejirimachi.

He proved his identity by previous consular certificate.

Consulate of Portugal in Tokyo, on June 30, 1947.

(Rubber Stamp): Consulate of Portugal, Tokyo

(Photograph)

(Rubber Stamp): Consulate of Portugal, Tokyo

Characteristics: Height, Hair, Face, Beard, Eyes, Nose, Mouth, Color—Blank.

Signature of the person being registered

/s/ FILIPE J. d'AQUINO,

/s/ J. A. ABRANCHES PINTO,

Consul.

(Rubber Stamp): J. A. Abranches Pinto, Consul

This certificate is valid for the period of one year.

Paid at the rate of 0.80 the amount of Y9.60 in accordance with Item 1 of the table of rates, this amount being entered in the book of entries under No. 1753.

Tokyo, June 30, 1947.

/s/ A. PINTO.

(Rubber Stamp): Consulate of Portugal, Tokyo

(Stamp): Portuguese Republic 12\$00 Consular Service.

(Rubber Stamp): Consulate of Portugal, Tokyo

(On the back of the certificate: Rubber stamp with Oriental characters)

(Translation)

(Rubber stamp): Consulate of Portugal, Tokyo.

Consulate of Portugal

(Coat of Arms)

Tokyo

Service of the Portuguese Republic

Certificate of Consular Registry No. 159

The Consul of the Portuguese Republic in Tokyo makes it known that Ikuko Toguri d'Aquino (by

marriage to Filipe J. d'Aquino), marital status, married, profession, newspaperwoman, daughter of Jun Toguri and Fumi Toguri, born on July 4, 1918, a native of Los Angeles, California is a Portuguese citizen and is duly registered in the Register of this Consulate under No. 5 of Book No. 1 of inscriptions.

Her last residence was in (blank) and she arrived in (date blank) at this consular district.

She resides in Setagaya-ku, Ikejirimachi, No. 396.

She proved her identity by previous consular certificate.

Consulate of Portugal in Tokyo, on September 10, 1946.

(Rubber Stamp): Consulate of Portugal, Tokyo

(Photograph)

(Rubber Stamp): Consulate of Portugal, Tokyo

Characteristics: Height, Hair, Face, Beard, Eyes, Nose, Mouth, Color—Blank.

Signature of the person being registered

/s/ IKUKO TOGURI d'AQUINO,

/s/ J. A. ABRANCHES PINTO,

Consul.

This certificate is valid for the period of one year.

Paid at the rate of 0.20 the amount of Y2.40 in accordance with Item No. 1 of the table of rates,

this amount being entered in the book of entries under No. 1694.

Tokyo, September 10, 1946.

/s/ A. PINTO.

(Stamp): Portuguese Republic 12\$00 Consular Service.

(Rubber Stamp): Consulate of Portugal, Tokyo

(On the back of the certificate: Rubber stamp with Oriental characters)

(Translation)

Consulate of Portugal

Tokyo

Affidavit

I, Joao do Amaral Abranches Pinto, Consul of Portugal in Tokyo, upon request and because it is the truth and to whom it may concern, do hereby certify that, the books and documents belonging to the files of the Consulate of Portugal in Yokohama having been destroyed on the occasion of the earthquake and subsequent fire of September 1, in the year 1923, it is not possible to furnish the record of birth certificate of Filipe Jairus d'Aquino, married, born in Yokohama on March 26, 1921, son of Jose Filomeno d'Aquino and Maria d'Aquino.

Consulate of Portugal in Tokyo, November 4, 1948.

(Rubber Stamp): Consulate of Portugal, Tokyo

The Consul,

/s/ J. A. ABRANCHES PINTO,

J. A. ABRANCHES PINTO,

(Rubber stamp): Paid at the rate of 11.00 the amount of Y275.00 (Escudos 25\$00) in accordance with item 26 of the table of rates, this amount being entered in the book of entries under No. 257.

Tokyo, November 4, 1948.

/s/ A. PINTO.

(Stamp): Portuguese Republic 25\$00 Consular Service

(Rubber Stamp): Consulate of Portugal, Tokyo

(Translation)

Consulate of Portugal

Tokyo

(Consular Seal over wax)

/s/ A. PINTO.

I, Joao do Amaral Abranches Pinto, Consul of Portugal in Tokyo, Japan:

Do hereby certify that in the book of records and transcriptions of marriages of this Consulate of Portugal in Tokyo, on the back of page seven, page eight and back, there appears the record of marriage as follows:

Record No. 5—At the request of Filipe Jairus Testus d'Aquino, I, Joao do Amaral Abranches Pinto, Consul of Portugal in Tokyo, transcribe hereunder the following record of marriage, performed in conformity with the canonic laws of the Catholic Chapel annexed to Sophia University of Tokyo, in Kojimachi-ku, Tokyo, on the nineteenth day of the month of April, in the year nineteen hundred and forty-five, before the Reverend Father J. B. Kraus, S.J.

On the nineteenth day of the month of April in the year nineteen hundred and forty-five, in the chapel annexed to the Catholic Sophia University of Tokyo, in Kojimachi-ku, Tokyo, before the Reverend Father J. B. Kraus, S.J., the following performed their marriage: the bridegroom Filipe Jairus Testus d'Aquino, newspaperman, residing in this capital, single, a native of Yokohama, Japan, born on the twenty-sixth day of March, in the year nineteen hundred and twenty-one, legitimate son of Jose Filomeno d'Aquino and Maria d'Aquino, and the bride: Ikuko Toguri, residing in this capital, single, North-American citizen, a native of Los Angeles, California, United States of North America, born on the fourth day of July, in the year nineteen hundred and eighteen, legitimate daughter of Jun Toguri and Fumi Toguri, her name becoming Ikuko Toguri d'Aquino.

And for the records, I transcribe this marriage record in accordance with the terms of Article 36 of Decree Number 29970, published in the Govern-

ment Diary Number 240 of October 13, of the year 1939, and in the Portuguese Civil Code, on presentation of the proofs, which are annexed to this record at the request of the bridegroom. Consulate of Portugal in Tokyo, on the eighteenth day of the Month of June, in the year nineteen hundred and forty-five. Signature: J. A. Abranches Pinto, Consul. There follows the receipt of consular emoluments. Paid at the rate of exchange of 0.20 the amount of Forty Escudos (y 8.00) in accordance with item 20 of the table of rates, this amount being entered into the book of entries under No. 1620. Tokyo, June 18, 1945. Signed, A. Pinto. Fiscal stamp of the Consular Service duly authenticated by a rubber stamp reading:

Consulate of Portugal, Tokyo.

Nothing else appearing in the record that I am consulting, I issued these presents, to which is affixed a stamp of this Consulate, signed by me on the fourth day of the month of November, in the year nineteen hundred and forty-eight.

Consulate of Portugal in Tokyo, on November 4, 1948.

/s/ J. A. ABRANCHES PINTO,
J. A. ABRANCHES PINTO,
Consul.

(Rubber Stamp): Consulate of Portugal, Tokyo

(Stamp): Portuguese Republic, 40\$00, Consular Service)

(Rubber stamp): Consulate of Portugal, Tokyo

(Rubber stamp): Paid at the rate of 11.00 the amount of Y440.00 (Escudos 40\$00) in accordance with item 25 of the table of rates, this amount being entered in the book of entries under number 258.

Tokyo, November 4, 1948.

/s/ A. PINTO.

AFFIDAVIT

State of California,
City and County of San Francisco—ss.

Manuel Reis, being by me first duly sworn, deposes and says: That he is a resident of the City and County of San Francisco, State of California; that he understands, reads and writes both the Portuguese and the English languages, and is able to translate writings from one into the other of said languages; that he has translated the following documents, to wit:

(a) Consular certificate of Filipe Jairus d'Aquino;

(b) Consular certificate of Ikuko Toguri d'Aquino;

(c) Affidavit signed by the Consul of Portugal in Tokyo;

(d) Marriage certificate of Filipe Jairus Testus d'Aquino and Ikuko Toguri;

which documents are written in Portuguese; and that the annexed is a true, complete and correct

translation into English of the said foregoing attached documents in Portuguese, to the best of his knowledge and ability.

/s/ MANUEL REIS.

Subscribed and sworn to before me, this 9 of December, A.D. 1948.

[Seal]: /s/ H. M. ELISSAMBURU,
Notary Public.

My Commission expires Nov. 21, 1951.

[Note]: Translations only. Documents in Portuguese not printed.

[Endorsed]: Filed Nov. 15, 1948.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR DISCOVERY
AND INSPECTION

To Hon. Frank J. Hennessy, U. S. Attorney, Attorney for Plaintiff:

You will please take notice that on Monday, November , 1948, at the hour of 10 o'clock a.m. of said day, or so soon thereafter as counsel can be heard, the defendant will move the above-entitled Court for an order requiring the plaintiff to permit defendant to inspect and examine the statements, documents, records and things specified in the within Motion for Discovery and Inspection.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

MOTION FOR DISCOVERY
AND INSPECTION

The defendant Iva Ikuko Toguri D'Aquino, by her attorney, moves the Court for an order requiring the United States of America, plaintiff, or the attorney for plaintiff, to permit defendant to inspect and copy or photograph the following designated papers, documents or tangible objects, obtained from others by seizure or process, which said papers, documents or tangible objects, hereinafter specified, are material to the preparation of defendant's defense, said discovery and inspection to be at a time, place and in such manner and under such terms and conditions as are just, to-wit:

(1) The statement, purporting to be made up, in part, of an oral statement of the defendant obtained from her and taken down in pencil by Sergeant Page (Paige?) of the Counter Intelligence Corps of the U. S. Eighth Army in Japan, acting under the orders of Brigadier General Richard Thorpe and Lt. Col. Turner of the said Corps and Army at the Yokohama New Grand Hotel, Yokohama, Japan, on or about September 6, 1945, which purports to set forth a narration of defendant's residence, employment, marriage to Philip (Felipe) J. D'Aquino, a national, citizen and domiciliary of Portugal residing in Japan, and her activities in Japan from

July, 1941, to the date thereof, the defendant being at said time and place held under restraint by said Army authorities.

(2) The picture or pictures of the defendant and General Eichelberger, U.S.A., taken at the order of said General at the Yokohama New Grand Hotel, Yokohama, Japan, on or about September 6, 1945.

(3) The motion picture film and sound recording (sound film) synchronized therewith made of the defendants at Radio Tokyo, Tokyo, Japan, on or about October 1, 1945, on orders of the Signal Corps of the U. S. Eighth Army in Japan, and the radio script, consisting of several pages, then and there prepared for the same by a Second Lieutenant, U. S. Army, whose name was Cadeson or Kadeson or a name similarly pronounced, which defendant, by said person, was ordered to read into said sound film and thereafter at said time and place was ordered signed by defendant in her maiden name Iva I. Toguri and also, in quotes, "Tokyo Rose," together with several other pages of radio script then and there obtained by said person from the defendant.

(4) The typewritten, signed and witnessed statement, purporting to be made up, in part, of an oral statement obtained from the defendant and drawn up from pencil or ink notes made by a Mr. Hetrick who was in a U. S. Army uniform and either a member of the Counter Intelligence Corps of the U. S. Eighth Army in Japan, or attached thereto,

or a member of the U. S. Department of Justice or a member of the U. S. Federal Bureau of Investigation, at Sugamo Prison in Tokyo, Japan, on or about December, 1945, the defendant then and there being held under restraint and imprisoned by U. S. authority which restraint and imprisonment commenced on October 17, 1945, and continued until October 25, 1946, when defendant was released therefrom, together with the said notes, the said statement purporting to set forth a narration of defendant's residence, marriage to Philip (Felipe) J. D'Aquino, a national, citizen and domiciliary of Portugal residing in Japan, and her employment and activities in Japan from July 1941, to the date thereof.

(5) The typewritten, signed and witnessed statement, purporting to be made up, in part, of an oral statement obtained from the defendant by and drawn up by Fred Tillman, special agent of the U. S. Federal Bureau of Investigation, from his notes, he then being in U. S. Army uniform and attached to the Counter Intelligence Corps or the U. S. Eighth Army in Japan, and thereafter signed by defendant at Sugamo Prison, Tokyo, Japan, on or about April, 1946, together with the original notes thereof, the defendant being held in restraint and imprisoned at said Sugamo Prison at said times by the United States, said statement purporting to narrate the history of defendant's residence, marriage and employment in Japan from July, 1941, to the date thereof.

(6) The photostat copy of notes purporting to be made by Clark Lee and purporting to be or to relate to an interview of the defendant by Harry Brundidge and Clark Lee, newspaper correspondents attached to the U. S. Eighth Army in Tokyo, Japan, purporting to have taken place on or about September 2, 1945, at the Imperial Hotel in Tokyo, Japan, said photostat copy of notes being initialed "ID'A" on each page thereof and signed in defendant's name on or about March 26, 1948, at the building of General Headquarters of the United States Army, Tokyo, Japan, to which defendant forcibly was brought by agents of the United States from her home and sick bed in Tokyo, Japan, the said Harry Brundidge and one, John Hogan, a special assistant to the U. S. Attorney General, being present at said time and place, said photostat copy of notes purporting to relate to the history and activities of defendant in Japan from 1941 to the date thereof.

(7) The package of typewriter sized foolscap paper, consisting of a series or number of original and perhaps, a number of carbon copies, of typewritten pages or script, approximately one-half inch thick, obtained from the defendant by agents of the Counter Intelligence Corps of the U. S. Eighth Army in Japan, namely, Sergeant Page (Paige?) for Lt. Col. Turner at Yokohama, Japan, on or about September 15, 1945, said package of papers thereafter being in the possession of Fred Tillman,

special agent of the U. S. Federal Bureau of Investigation, who, on or about April, 1946, at Sugamo Prison, Tokyo, Japan, obtained defendant's initialing of each page thereof while she was held in restraint and duress at said prison by United States authority, said papers in said package of papers being in the nature of radio script purporting to have been prepared for broadcast from Radio Tokyo.

(8) Any and all phonographic tape, wire, electrical, magnetic, sound or other types of records, recordings or transcriptions made, manufactured, received or intercepted, and in the possession of or available to plaintiff, of any and all of the Zero Hour programs of Radio Tokyo or radio station JOAK on which the prosecution asserts or will assert at any trial herein that the defendant or person designated or known or referred to as "Orphan Ann," "Orphan Annie" or "Tokyo Rose" spoke, talked, recorded, announced or broadcasted any statement, matter or thing, together with any and all of the musical records or pieces or recordings thereof which the prosecution asserts or will assert at any trial herein that such person played, announced or broadcast thereon, covering the period of time from or about November 1, 1943, to and including August 15, 1945.

(9) Any and all recordings of the defendant's voice made on or about January 6, 1946, at Radio Tokyo, in Tokyo, Japan, obtained from the defendant by order of the Counter Intelligence Corps of

the U. S. Eighth Army in Japan, which the prosecution asserts or will assert at any trial herein to be a recording of defendant's voice.

(10) Any and all recordings of the defendant's voice made on or about February, 1948, at Radio Tokyo, in Tokyo, Japan, obtained from the defendant by order of the Counter Intelligence Corps of the U. S. Eighth Army in Japan, which the prosecution asserts or will assert at any trial herein to be a recording of defendant's voice.

(11) Several pages of handwritten script on typewriter sized foolscap paper, the contents purporting to be radio script, obtained from the defendant at Yokohama Prison, Yokohama, Japan, by Col. Robert Hardy, U.S.A., officer in charge of that prison, on or about October 17, 1945, which purports to be radio script prepared for broadcast.

(12) Any and all other papers, documents, records and things the United States or its agents obtained, if any, from the defendant, her husband or her home and residence situated at No. 396 Ikejiri Machi, Setagaya Ku, Tokyo, Japan during the enforced absence therefrom of the defendant, which has or may have any bearing on any issues involved in this cause whether or not the plaintiff or its agents intend to use or offer any such evidence at any trial of the issues herein.

Inspection of each and all of the above-mentioned statements, documents and things, obtained from defendant as above stated, are or may be material to

the preparation of defendant's defense to the indictment herein and are in the possession of or available to the plaintiff, or its agents, representatives and attorney.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

State of California,
City and County of San Francisco—ss.

Wayne M. Collins being first duly sworn deposes and says: that he is attorney of record for Iva Ikuko Toguri D'Aquino, defendant herein; that he has read the foregoing Motion for Discovery and Inspection and knows the contents thereof; that as such attorney he has investigated the facts concerning each of the twelve statements, documents and records mentioned therein; that he verily believes the facts to be true which therein are recited or narrated in said motion; that each of the items therein sought to be inspected, examined and copied or photographed are, for the reasons therein stated, material to the preparation of defendant's defense to the charges brought against her in the indictment in said cause and he verily believes that defendant's request and motion for discovery and inspection thereof is reasonable.

/s/ WAYNE M. COLLINS.

Subscribed and sworn to before me this 15th day of November, 1948.

[Seal] /s/ JANE M. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco, State of California.

Points and Authorities in Support of Motion
for Discovery and Inspection

The motion for discovery and inspection of the statements, documents and things set forth in said motion is authorized specifically by the new rule of criminal procedure, Rule 16 of the Rules of Criminal Procedure for the District Courts of the United States in 1946.

See also, U.S. v. B. Goedde & Co., 40 Fed. Sup. 523, 534, decided in 1941 and so authorizing before the new rule became effective.

Respectfully submitted,

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed November 15, 1948.

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS INDICT-
MENT ON DEFENSES AND OBJECTIONS
CAPABLE OF DETERMINATION WITH-
OUT TRIAL OF GENERAL ISSUE

To Hon. Frank J. Hennessy, U. S. Attorney, At-
torney for Plaintiff:

You will please take notice that on Monday, No-
vember , 1948, at the hour of 10 o'clock a.m. of
said day, or so soon thereafter as counsel can be

heard, the defendant will move the above-entitled Court to dismiss the indictment herein upon the grounds and for the reasons set forth in the within Motion to Dismiss Indictment on Defenses and Objections Capable of Determination Without Trial of General Issue.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

MOTION TO DISMISS INDICTMENT ON DEFENSES AND OBJECTIONS CAPABLE OF DETERMINATION WITHOUT TRIAL OF GENERAL ISSUE UNDER RULE 12, RULES OF CRIMINAL PROCEDURE

The defendant moves the court to quash and dismiss the indictment upon a determination of each and all of the following defenses and objections to the indictment which are capable of determination without a trial of the general issue, upon each and all of the following grounds and for the following reasons, to-wit:

(1) The cause is barred by the provisions of the 5th Amendment by reason of the prior acquittal of the defendant by the United States on or about September 6, 1945, on the same charges contained in the indictment herein which were preferred against her by the United States, in Japan, on or about September 5, 1945.

(2) The cause is barred by the provisions of the 5th Amendment by reason of the prior acquittal of the defendant by the United States on or about October 25, 1946, on the same charges contained in the indictment herein which were preferred against her by the United States, in Japan, on or about October 17, 1945.

(3) The cause is barred by the provisions of the 5th Amendment against subjecting the defendant to double jeopardy of life or limb for the same offense by reason of the fact that the defendant previous to the time this indictment was returned herein, to wit, on September 5, 1945, was put in jeopardy by the United States for the same offense alleged in the indictment herein.

(4) The cause is barred by the provisions of the 5th Amendment against subjecting the defendant to double jeopardy of life or limb for the same offense by reason of the fact that the defendant previous to the time this indictment was returned herein, to wit, on October 17, 1945, and thereafter unto October 25, 1946, was put in jeopardy by the United States for the same offense alleged in the indictment herein.

(5) The cause is barred by the provisions of the 5th Amendment by reason of the prior conviction of the defendant, without trial, on or about October 17, 1945, by the United States on the same charges contained in the indictment herein which were preferred against her by the United States, in Japan,

on or about said October 17, 1945, followed by her sentence, commitment to and imprisonment, by the United States, in the Yokohama Prison, Yokohama, Japan, on said date and transfer therefrom on November 16, 1945, to the Sugamo Prison, Tokyo, Japan, by the United States, her jailer, and her final release and discharge therefrom by the United States on October 25, 1946.

(6) The cause is barred by reason of the fact that the issues of fact and of law involved herein are res judicata because the defendant heretofore, on or about September 6, 1945, was acquitted by the United States in Japan of the identical charges herein which there were brought against her on September 5, 1945, by the United States.

(7) The cause is barred by reason of the fact that the issues of fact and of law involved herein are res judicata because the defendant heretofore, on or about October 25, 1946, was acquitted by the United States in Japan of the identical charges herein which there were brought against her on October 17, 1945, by the United States.

(8) The cause is barred by reason of the fact that the issues of fact and of law involved herein are res judicata because the defendant heretofore, on or about September 5, 1945, was convicted by the United States in Japan of the identical charges herein which there were brought against her on that date by the United States.

(9) The cause is barred by reason of the fact that the issues of fact and of law involved herein are *res judicata* because the defendant theretofore, on or about October 25, 1946, was convicted by the United States in Japan of the identical charges herein which there were brought against her on October 17, 1945, by the United States which thereupon imprisoned her thereon for one year, one week and one day until October 25, 1946, in Japan and thereupon discharged her from imprisonment.

(10) The cause is barred by the fact that the United States, in violation of the guaranty of the 6th Amendment, safeguarded by the due process clause of the 5th Amendment, long has deprived the defendant of a "speedy," public, fair and impartial trial, of being informed of the nature and cause of any accusation against her, of being confronted with any witnesses against her, of having compulsory or any process for obtaining witnesses in her favor and of the assistance of counsel for her defense by reason of the facts that the defendant, on or about October 17, 1945, was accused and charged by the United States, in Japan, of the commission of the same offense and charges contained in the indictment herein and, thereafter, on said October 17, 1945, thereon was sentenced and committed to and imprisoned by the United States in the Yokohama Prison, Yokohama, Japan, from that date until November 16, 1945, when she was transferred to the Sugamo Prison, Tokyo, Japan, where she continu-

ously was imprisoned by her jailor, the United States, until October 25, 1946, when she was released and discharged from custody by the United States and, thereafter, on August 26, 1948, the defendant again was re-arrested at her home in Tokyo, Japan, by the United States and ever since then continuously has been imprisoned by the United States and, on September 25, 1948, forcibly was brought to San Francisco, in custody, from Japan by the United States and ever since then has been and now is imprisoned by the United States, all of which has operated to deprive and has deprived defendant of said constitutional guarantees and has operated to deprive and has deprived and caused this court to lose jurisdiction over the cause and over the person of the defendant.

(11) The cause is barred by virtue of the fact that the defendant is not a citizen or subject of the United States but is and ever since on or about April 19, 1945, has been a national, citizen and domiciliary of Portugal and lawfully a permanent resident of Japan by virtue of her marriage to Felipe (Philip) J. D'Aquino, an adult national, citizen and domiciliary of Portugal who then and ever since then has been and now is a lawful and permanent resident of Tokyo, Japan, and, in consequence, the court has neither lawful jurisdiction over the person of the defendant nor over the cause.

(12) The cause is barred by the fact that, if the defendant at any time was a national and citizen of the United States, her employment, as alleged in

the indictment, from on or about November 1, 1943, to and including August 13, 1943, by the Broadcasting Corporation of Japan, therein alleged to have been a company controlled by the Imperial Japanese Government, in the position therein referred to, in and of itself, constituted an act of expatriation and operated to cause her to lose her said United States nationality and citizenship and to become an expatriate in Japan and, in consequence, a person outside the lawful jurisdiction of the United States and of this court and not subject to the jurisdiction of the United States and of this court.

(13) Neither this judicial district nor this court is the proper venue for the return of the indictment herein.

(14) Neither this judicial district nor this court is the proper venue for the trial of the cause.

(15) The court has no jurisdiction over the person of the defendant and could not acquire any such jurisdiction by virtue of the fact that she is a national and citizen of Portugal, domiciled in Portugal, and a lawful and permanent resident of Tokyo, Japan, who was kidnapped unlawfully in Japan by the United States and forcibly brought to San Francisco by the United States.

(16) The court has no jurisdiction over the cause and could not acquire any such jurisdiction by virtue of the fact that she is a national and citizen of Por-

tugal, domiciled in Portugal, and a lawful and permanent resident of Tokyo, Japan, who unlawfully was seized in Japan by the United States and forcibly brought to San Francisco by the United States.

(17) The jurisdiction over the person of the defendant is lodged in the Government of Portugal to the exclusion of the United States and this court.

(18) The jurisdiction over the cause, if any exists, is lodged in the Government of Portugal to the exclusion of the United States and this court.

(19) Jurisdiction over the defendant is lodged in the War Department or the military commissions, tribunals or war courts set up by the U. S. and its Allies in Japan, to the exclusion of the Attorney General and this court.

(20) Jurisdiction of the offense alleged in the indictment is lodged in the War Department or the military commissions, tribunals or war courts set up by the United States and its Allies in Japan, to the exclusion of the Attorney General and this court.

(21) The jurisdiction over the person of the defendant is lodged in the Government of Japan to the exclusion of the United States and this court.

(22) The jurisdiction over the cause, if any exists, is lodged in the Government of Japan to the exclusion of the United States and this court.

(23) Neither the United States nor this court has jurisdiction over the person of the defendant

for lack of consent to such jurisdiction on the part of the Government of Portugal, the Government of Japan, the Allied Powers in Japan and the United States Military Government in Japan, and on the part of each of them.

(24) Neither the United States nor this court has jurisdiction over the cause for lack of the consent to such jurisdiction of the Government of Portugal, the Government of Japan, the Allied Powers in Japan and the United States Military Government in Japan, and of the consent of each of them.

(25) The cause is barred by the limitation against prosecution, trial and punishment provisions of Title 18, USCA, Section 582, providing that "No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046 (section 584 of this title), unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed," and by the provisions of Title 18 USCA, Sec. 3282, which set up a limitation against prosecution, trial and punishment for offenses not capital unless the indictment is found within three years next after such offense shall have been committed.

(26) The cause is barred by the limitation of prosecution, trial and punishment provisions of Title 18 USCA, Section 581, which provides that "No person shall be prosecuted, tried, or punished for treason or other capital offense, wilful murder ex-

cepted, unless the indictment is found within three years next after such treason or capital offense is done or committed," said statute not being repealed by the Act of Aug. 4, 1939, c. 419, sec. 1, 53 Stat. 1198, codified as Title 18 USCA, secs. 581a and 581b and Sec. 3281, effective Sept. 1, 1948, which authorize an indictment for any offense punishable by death to be found at any time without regard to any statute of limitations but, clearly does not authorize either a prosecution, trial or punishment for treason committed three years before indictment found, treason not necessarily being an offense punishable by death, those new sections merely authorizing a grand jury to return an indictment in such a case.

This motion will be made upon the indictment, this motion, notice thereof, affidavits, documents, records and papers in support thereof to be submitted thereon, points and authorities, motion to dismiss the indictment filed herein concurrently herewith, and all other pleadings, papers and files herein and upon any evidence that may be adduced in support of this motion at the time the same is heard.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Endorsed]: Filed November 15, 1948.

Affidavit in Support of Motions to Dismiss

State of California,
Northern District of California,
City and County of San Francisco—ss.

Jun Toguri, being first duly sworn, deposes and says:

My name is Jun Toguri. I am a widower. I am 66 years of age. I am a grocer by occupation. My place of business is situated at 1128 North Clark Street, Chicago, Ill. I reside at 1012 North Clark Street, Chicago, Ill., which has been my home ever since September, 1944.

I was born at Yamanashi Ken, in Japan, on March 25, 1882, of full Japanese blood, and ever since then I have been and now am a national and citizen of Japan. I graduated from the Jikyo Kan school in Yamanashi Ken, Japan.

On or about June 8, 1907, I was lawfully united in marriage, at Yokohama, Japan, to Fumi Iimuro, a full blooded Japanese who was born in Tokyo, Japan, on or about February 14, 1888, and who, continuously until her death at the Tulare Assembly Center, Tulare County, California, on May 24, 1942, was a national and citizen of Japan.

I was lawfully admitted to the United States for permanent residence on or about September, 1899, at Seattle, Washington. Fumi Toguri, nee Iimuro, my said wife, now deceased, was lawfully admitted to the United States for permanent residence on or about November 1, 1913, at San Francisco, California.

Iva Ikuko Toguri d'Aquino, the defendant in criminal proceeding No. 31712 R now pending in the United States District Court for the Northern District of California, Southern Division, which was filed therein on October 8, 1948, is my natural daughter and the natural daughter of my said wife, Fumi Toguri, nee Iimuro, deceased, born during wedlock.

My daughter, Iva Ikuko Toguri d'Aquino, ever since July 25, 1941, has been and now is a resident of Tokyo, Japan, albeit since on or about September 3, 1948, she has not physically been present in Japan by virtue of her removal therefrom by agents of the United States to San Francisco, California.

On April 19, 1945, my said daughter, Iva Ikuko Toguri, then and now an adult female, lawfully was united in marriage to one, Felipe J. d'Aquino, an adult male, at the Sofia University Chapel in Tokyo, Japan, according to the rites of the Roman Catholic Church and faith of which Church and faith each of them then was and now is a member. That said marriage then was and ever since then has been and now is lawful according to the law of Portugal and of Japan and, as such, is recognized as being lawful by the law of the United States. Ever since her said marriage said Iva Ikuko Toguri d'Aquino, my daughter, has resided continuously with her said husband at their home and residence situated at No. 396 Ikejiri Machi, Setagaya-Ku, Tokyo, Japan.

The said Felipe J. d'Aquino, who is my son-in-law by virtue of his said marriage to my said daugh-

ter, was born at Yokohama, Japan, on or about March 26, 1919. He is a linotype operator and proof reader by occupation.

The father of said Felipe J. d'Aquino is Jose F. d'Aquino who resides in Atsugi, Kanagawa Ken, Japan, and is a person of half Portuguese blood derived from his father, the paternal grandfather of said Felipe J. d'Aquino, who was a person of full Portuguese blood and a national, citizen and domiciliary of Portugal, and said Jose F. d'Aquino ever since his birth has been and now is a national, citizen and domiciliary of Portugal and is a resident of Japan. The mother of said Felipe J. d'Aquino is Maria d'Aquino who resides with her husband, the said Jose F. d'Aquino, at Atsugi, Kanagawa Ken, Japan, and is a person of full Japanese blood, maternally and paternally, and is a national, citizen and domiciliary of Portugal, by reason of her said marriage to her said Portuguese husband. The said Jose F. d'Aquino and the said Maria d'Aquino, his wife, ever since the birth of their natural son, the said Felipe J. d'Aquino, have been and now are lawful residents of Japan. The said Felipe J. d'Aquino is $\frac{1}{4}$ th Portuguese blood and $\frac{3}{4}$ ths Japanese blood.

The said Felipe J. d'Aquino, according to the law of Portugal, as also the law of Japan, ever since his said birth has been and now is a national, citizen and domiciliary of Portugal, derived from his said father and mother, to the exclusion of any claim of any government, other than Portugal, to

his allegiance; and, ever since his said birth he has been and now is a lawful resident of Japan, presently residing therein at No. 396 Ikejiri Machi, Setagaya-Ku, Tokyo, Japan, the home and residence of said Felipe J. d'Aquino and said Iva Ikuko Toguri d'Aquino, his wife. The said exclusive Portuguese nationality, citizenship and domicile of said Felipe J. d'Aquino ever since his birth continuously has been and now is lawful and valid according to the law of Portugal and of Japan, as also according to the law of the United States.

/s/ JUN TOGURI,
Affiant.

Subscribed and sworn to before me this 15th day of November, 1948.

[Seal] /s/ JANE M. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco, State of California.

Receipt of copy acknowledged.

[Endorsed]: Filed November 15, 1948.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR
BILL OF PARTICULARS

To Hon. Frank J. Hennessy, U. S. Attorney, Attorney for Plaintiff:

You will please take notice that on Monday, November , 1948, at the hour of 10 o'clock a.m. of

said day, or so soon thereafter as counsel can be heard, the defendant will move the above-entitled Court for an order requiring the plaintiff to furnish defendant with the Bill of Particulars as set forth in the within Motion for Bill of Particulars.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Iva Ikuko Toguri D'Aquino, defendant, by her attorney, moves the Court for an order requiring the United States of America, plaintiff, to file and furnish her with a Bill of Particulars, acts, facts and things as to the following matters which are so vague, indefinite, uncertain, ambiguous, evasive, equivocal and contradictory, and improperly and generally alleged, or attempted to be alleged, in the indictment returned against her in this cause, or omitted therefrom, in the following matters and respects and for the following reasons, to-wit:

1. A statement of the particular place or places to which the word "elsewhere" on the last line of paragraph 2 on line 13 of page 2 of the indictment refers.

2. A statement of the particular place or places to which the word "elsewhere" in paragraph 3(a) on line 25 of page 2 of the indictment refers.

3. A statement of the particular place or places to which the word "elsewhere" in paragraph 3(b) on line 29 of page 2 of the indictment refers.

The defendant states that the words "elsewhere" in each of the three instances above referred to is a word of broad and general meaning and is so unspecific and uncertain as to be susceptible of different interpretations and, consequently, in nowise advises or informs her as to its use, meaning, significance and relevancy to the purported cause of action.

4. A statement of the respect or respects in which the Broadcasting Corporation of Japan was controlled by the Imperial Japanese Government, as alleged in paragraph 3(a) on page 2 of the indictment, or the meaning of the word "controlled" as therein used.

The defendant states that the word "controlled" in the phrase "the Broadcasting Corporation of Japan, a company controlled by the Imperial Japanese Government," in paragraph 3(a) on page 2 of the indictment, is a word of broad and general meaning and is so unspecific and uncertain as to be susceptible of different meanings and interpretations and, consequently, in nowise advises or informs her of the nature and facts of said control or of its relevancy to the purported cause of action.

5. A statement whether or not the alleged adherence of the defendant and the giving of aid and

comfort to the enemies specified generally in paragraph 3 on pages 2 and 3 of the indictment actually had the effect or result of aiding and comforting the enemies of the United States and, if so, in what respect or respects.

The allegations of adherence to the enemies by giving them aid and comfort in paragraph 3(a) on page 2 of the indictment are couched in general language and are so broad and of such a general meaning and significance and are so unspecific and uncertain as to the particular facts, nature and character thereof as to leave the defendant completely in the dark as to the facts, conduct or things constituting the alleged adherence, aid and comfort. Further, nowhere therein or elsewhere in the indictment is there any allegation whatever that alleged adherence, aid and comfort of the defendant to the enemies, so generally pleaded in the indictment, actually had the effect or result of destroying confidence in the war effort of the United States and its Allies, and of undermining and lowering American and Allied military morale, and of creating nostalgia in the minds of the American and Allied forces, and of creating war weariness among members of the American and Allied armed forces, and of discouraging members of the American and Allied armed forces, and of impairing the capacity of the United States to wage war against its enemies, or of any of said things. The indictment is wholly deficient in said respects. Those very ma-

terial allegations are entirely missing in the indictment and, in consequence, if anything is pleaded therein it is simply that the defendant entertained a mental intent to commit or merely attempted treason. However, neither of such offenses is known to American law. In consequence, the language in said paragraph 3(a) is entirely too general and sets forth nothing but broad and general acts and conduct which, in themselves, are entirely harmless and innocent and, therefore, utterly insufficient to constitute the crime attempted to be charged. Although the indictment alleges legal conclusions of a crime of treason it fails to set forth any ultimate facts constituting such a crime and is utterly lacking in any allegation of facts charging or showing that any act or conduct of the defendant had any such effect or result and, consequently, fails to allege a completed [copy missing] The type of the pleading contained in the indictment would compel the defendant, the court and jury to resort to speculation to determine the nature of the accusation and the ultimate facts constituting the purported crime. In addition, it in nowise informs the defendant of the nature and facts of the crime it attempts to allege and wholly fails to allege that the purported crime was completed.

6. A statement of the precise or approximate time or times the defendant worked, announced and wrote radio script as alleged in paragraph 3(a) on page 2 of the indictment.

7. A statement of the nature, character and contents, in substance or effect, of the statements made by defendant as a radio speaker, radio announcer and broadcaster of recorded music alleged in paragraph 3(a) on page 2 of the indictment.

8. A statement of the nature, character and contents, in substance or effect, of the radio script prepared or composed by the defendant and of her talks and announcements and announcements of radio script alleged in paragraph 3(a) on page 2 of the indictment.

9. A statement of the nature and contents, in substance or effect, of the announcements and introductions made by the defendant of musical recordings and talks for broadcast by radio from Japan alleged in paragraph 3(a) on page 2 of the indictment, and the names of the record musical pieces or recordings broadcast by radio.

Neither the precise nor the approximate time or times of the occurrences of the matters alleged in paragraph 3(a) of the indictment are set forth therein nor is there any statement therein of the nature, character and contents of the acts and conduct of the defendant alleged to have been made by her as a radio speaker, announcer and broadcaster, that is to say, of the material ultimate facts. Neither the nature, character nor contents of the radio script prepared and composed by the defendant or of her talks and announcements, and announcements

of radio script, or the names of the musical recordings she is asserted to have broadcast, are set forth therein. In consequence, the defendant cannot ascertain therefrom and is neither advised nor informed thereby in what respect or respects, if any, in which the radio script, announcing and broadcasting, and musical recordings broadcasted were unlawful and is neither advised nor informed as to the nature and character thereof. She, therefore, requests that she be advised specifically as to these particulars and of what is intended to be charged against her, and that she be supplied with copies of the said script with which she will be confronted at the trial in the prosecution's attempt to prove these charges and with a statement, in substance or effect, of the precise and actual nature, character and contents of the talks, announcements and broadcasts she is alleged to have made which the prosecution will attempt to prove at the trial and the respects and particulars wherein the same were treasonable or are asserted or will be asserted to be of a treasonable nature at any trial of the issues which may be had herein.

10. A statement of the name of the "another person," mentioned in overt act No. 1 in paragraph 1 on page 3 of the indictment, with whom the defendant discussed the proposed participation of defendant in the radio broadcasting program therein mentioned.

The name of the "another person" is not alleged in the indictment to be unknown to the grand jurors and, in consequence, it is to be presumed that the name of such person actually was known to them and to plaintiff and that it, therefore, should have been alleged therein. Without the name of the person and the precise or approximate time the discussion was had being revealed (the time there specified extends over a period of two calendar months) the defendant is not informed either when or with whom she is charged with having the discussion and is unable to ascertain whether she at any time had a discussion with any specific person and is neither advised nor informed as to what the allegation means.

11. A statement of the precise or approximate time when overt act No. 1, mentioned in paragraph 1 on page 3 of the indictment, took place together with a statement of the words spoken by each, in substance or effect, in the discussion therein mentioned and the nature of the discussion.

12. A statement of the precise or approximate time when overt act No. 2, mentioned in paragraph 2 on page 3 of the indictment, took place, together with the names and addresses of the employees of the Broadcasting Corporation of Japan with whom the defendant is alleged to have had the discussion therein alleged, together with a statement of the words spoken, in substance or effect, by each of them and defendant, in that discussion.

13. A statement of the precise or approximate time when overt act No. 3, mentioned in paragraph 2 on page 4 of the indictment, took place, together with the words spoken by defendant into the microphone, in substance or effect, and the nature of the statements made.

14. A statement of the precise or approximate time when overt act No. 4, mentioned in paragraph 4 on page 4 of the indictment, took place, together with the words spoken by defendant, in substance or effect, into the microphone and also a statement, in substance or effect, of the precise reference alleged therein to have been made by her concerning enemies of Japan.

15. A statement of the precise or approximate time when overt act No. 5, mentioned in paragraph 5 on page 4 of the indictment, took place, together with the nature and contents, in substance and effect, of the script prepared for subsequent radio broadcast concerning the loss of ships, the ships to which it referred and the precise statement which was made concerning the loss of ships, either in substance or effect.

16. A statement of the precise or approximate time when overt act No. 6, mentioned in paragraph 6 on page 4 of the indictment, took place, together with the words which were spoken, in substance or effect, concerning the loss of ships, together with a

statement of what ships the statement referred to.

17. A statement of the precise or approximate time when overt act No. 7, mentioned in paragraph 7 on page 4 of the indictment, took place, together with a statement of the nature and contents, in substance or effect, of the radio script therein alleged to have been prepared.

18. A statement of the precise or approximate time when overt act No. 8, mentioned in paragraph 8 on page 4 of the indictment, took place, together with the words, in substance or effect, which were spoken into the microphone and the names of each of the persons who engaged in the entertainment dialogue therein mentioned and the words spoken, in substance or effect, by each of the participants in the entertainment dialogue therein mentioned.

Each of the eight acts alleged in the indictment to be overt acts are alleged in terms so general, broad, loose, uncertain, unspecific, unrevealing and concealing as to time and as to facts sought to be elicited in the eight particulars hereinabove set forth that they are susceptible to nothing but speculation and guesswork. Each of those overt acts as alleged in the indictment are allegations of matters which on their face are absolutely innocent and innocuous matters. Inasmuch as these special allegations of overt acts modify and control the general allegations of the purported crime and are innocent on their face the indictment in nowise advises or

informs the defendant of the accusation against her but leaves all these important matters to the imagination.

19. A statement of the times and places where defendant was arrested in Japan and confined to prison by agents of the United States, and thereafter released therefrom, the periods of time of said imprisonments, the authority and purpose for the said arrests and commitments to imprisonment and discharges therefrom, and a statement of the purpose for which and the authority under which defendant was arrested in Japan and brought to San Francisco in this Federal Judicial District shortly prior to the date of the return of the indictment herein, as alleged in the final paragraph on page 4 of the indictment, and also a statement whether or not each of her said arrests and imprisonments and releases therefrom, and her removal from Japan to San Francisco, and each of said things, were done with the consent and authority of the Allied Powers, the government of Portugal, and the government of Japan or of any of said sovereign powers.

Inasmuch as the foregoing particulars, facts and details are not fully alleged in the indictment the defendant is neither advised nor informed thereby of the legal authority, if any existed at the time of said occurrences or now exists, for her arrests and imprisonments in Japan and discharges therefrom and her removal to San Francisco and whether this court has acquired and has any jurisdiction over

her person and over the cause, it appearing on the face of the indictment that the arrest of defendant in Japan and her removal to this jurisdiction was an illegal extraterritorial act of the United States wholly outside its jurisdiction which did not and could not confer jurisdiction over the defendant and of the cause upon this court or confer lawful venue hereof upon this court. The indictment fails to set forth and, therefore, to inform the defendant and this court whether or not the arrests, imprisonments and removal of defendant from Japan to the United States was authorized by or consented to by the Allied Powers, the government of Portugal, and the government of Japan, or any of said sovereign powers, in consequence of which, neither the defendant nor the court can ascertain what authority, if any, existed therefor or ascertain whether the court has jurisdiction over the defendant or over the cause.

20. A statement whether the employment of defendant as a radio operator, radio announcer, radio script writer and broadcaster of recorded music, as alleged in paragraph 3(a) of the indictment, was or was not in a capacity for which only Japanese nationals were eligible.

It cannot be ascertained therefrom whether or not the said acceptance of employment by defendant in said corporation was in a capacity for which Japanese nationals only were eligible, a fact which is material to the cause and jurisdiction of the court as bearing on the legal conclusion that such a type of employment in and of itself constituted an act of

expatriation according to our law whereby a person thereby loses the nationality then possessed and thereby becomes either a foreign subject or acquires a foreign nationality, by operation of U. S. law.

21. A statement of the facts upon which are based the conclusions in the indictment, in paragraph 1 on page 1, paragraph 2 on page 2, and paragraph on top of page 4, that defendant is a citizen of the United States and a person owing allegiance to the United States.

22. A statement whether or not the defendant at Tokyo, Japan, was united in marriage to her now husband, Felipe J. D'Aquino, on April 19, 1945, who then was and ever since then has been and now is a national, citizen and domiciliary of Portugal residing in Japan.

It appears from the indictment that the defendant is a married person and a resident of Japan and, therefore, is presumed to be a foreigner who was brought to San Francisco in the custody of U. S. agents from which it follows that, by operation of law, she is a foreign national and, in consequence, defendant requests that the plaintiff be required to state openly and unequivocally whether or not defendant is and long has been exclusively a national, citizen and domiciliary of Portugal, lawfully residing in Japan, and whether or not she acquired that political status upon and by virtue of her marriage to a Portuguese national, citizen and domiciliary resident in Japan on April 19, 1945.

23. A statement whether or not the United States heretofore, within the past three years, arrested defendant thrice or at all in Japan on the same accusation of treason as charged in the indictment herein and imprisoned her thrice and thereafter, acquitted her of the charges or convicted her thereon or sentenced or imprisoned her thereon and thereafter liberated her from such imprisonment at any time and, if so, when.

The indictment is silent on these material particulars although the facts thereof are peculiarly within the knowledge of the plaintiff. The fact of a prior acquittal (*autrefois acquit*) or conviction is a bar to the present accusation and the indictment is barred by the constitutional provision against subjecting defendant twice for the same offense and twice putting her in in jeopardy of life or limb for the same offense and for inflicting upon her a prohibited repetition of penalty which is cruel and unusual punishment.

Each of the foregoing 23 specified particulars and their details, in which the indictment is fundamentally lacking, are essential and necessary to advise and inform the defendant of the nature of the accusation against her with sufficient precision to enable her to learn the nature thereof, to enable her to prepare her defense thereto, to prevent her from being taken by surprise at any trial of the issues herein and to enable her to plead the conclusion thereof in bar of another prosecution on the same charge.

The defendant states to the Court that this application and motion for a bill of particulars is filed in good faith; that it is not filed for the purpose of delay, and that it is filed and made so that she may inform herself of the nature and cause of the accusation against her and thereby enable her properly to prepare her defense.

Dated: November 15, 1948.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

State of California,
City and County of San Francisco—ss:

Wayne M. Collins, being first duly sworn, deposes and says: that he is attorney of record for Iva Ikuko Toguri D'Aquino, defendant herein; that he has read the foregoing Motion for Bill of Particulars and knows the contents thereof; that he verily believes the fact to be that the indictment is vague, indefinite, uncertain and deficient in the respects, particulars and details specified in said Motion; that the defendant cannot safely go to trial on the indictment herein without the particulars and details of the matters specified in the said Motion and that said particulars and details are essential and necessary to inform defendant of the nature of the accusation against her with sufficient precision to enable her to prepare for any trial of the cause that may be had herein, to prevent her from being taken by surprise thereat and to permit her to plead the

conclusion thereof in bar of another prosecution on the same charge.

/s/ WAYNE M. COLLINS.

Subscribed and sworn to before me this 15th day of November, 1948.

[Seal] /s/ JANE M. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco, State of California.

Points and Authorities in Support of Motion
for Bill of Particulars

If an indictment fails to allege offenses charged with sufficient fullness and definiteness as to time, place, and other circumstances and more precise information is needed it should be obtained by a bill of particulars.

Peck v. U.S. (CCA-7), 65 Fed. 2d. 59, 61,
cert. den. 290 U.S. 701.

See also: Saul Samuel et al. v. U.S. (CCA-9),
169 Fed. 2d. 787, 791, decided Aug. 20, 1948.

Billingsley v. U.S. (CCA-8), 16 Fed. 2d. 754,
755, where denial was held prejudicial error.

If charges in an indictment are so general that they do not advise the accused specifically of the acts of which he is accused the deficiencies must be supplied by a bill of particulars.

Wilson v. U.S. (CCA-NY), 275 Fed. 307, 310-
311, cert. den. 257 U.S. 649.

The office of a bill of particulars is to inform the accused of the nature of the charge with sufficient precision to enable him to prepare for trial, prevent surprise and to plead his acquittal or conviction in bar of another prosecution for the same offense.

U.S. v. Aluminum Co. (DCNY) 41 F.S. 347, 348.

9 Hughes Fed. Prac. pg. 515, sec. 7046.

10 C. J. S. pg. 1096.

Respectfully submitted,

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

[Endorsed]: Filed November 15, 1948.

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 3rd day of January, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order that Motion for Bill of Particulars, Motion to Dismiss Indictment be denied, and that Motion for Discovery and Inspection be granted as to request number 7 but denied as to remaining requests, and that Motion to Strike Indictment be denied.) (Plea of "Not Guilty.")

This cause came on this day for entry of plea, also for hearing on following motions: motion to dismiss Indictment, motion to strike, motion for discovery and inspection, motion for bill of particulars. The defendant, Iva Ikuko Toguri D'Aquino, was present in the custody of the U. S. Marshal and with her attorney, Wayne Collins, Esq. Tom De Wolfe, Esq., Special Assistant to the Attorney General, was present on behalf of the United States.

It is Ordered that the Motion for Bill of Particulars made pursuant to Rule 7(f) of the Rules of Criminal Procedure be and the same is hereby denied. That the Motion to dismiss the Indictment for failure to allege an offense be and the same is hereby denied. That the motion to dismiss the Indictment made pursuant to Rule 12(b) of the Rules of Criminal Procedure be and the same is hereby denied. That the Motion for discovery and inspection made pursuant to Rule 16 of the Rules of Criminal Procedure be granted as to request number

seven (7), and as to the remaining requests be and the same is hereby denied. That the Motion to strike the Indictment be and the same is hereby denied.

The defendant was called to plead and thereupon said defendant entered a plea of "Not Guilty" to the Indictment filed herein against her, which said plea was ordered entered.

On motion of Mr. Collins and with consent of Mr. De Wolfe, it is Ordered that this case be set for trial on May 16, 1949. (Jury)

[Title of District Court and Cause.]

NOTICE

To Frank J. Hennessy, United States Attorney,
and to Tom DeWolfe, Special Assistant to the
Attorney General, Attorneys for the Plaintiff

You and each of you will please take notice that on Monday, the 7th day of March, 1949, at the Courtroom of the above-entitled Court, 3rd Floor, Post Office Building, 7th and Mission Streets, San Francisco, California, at the hour of 2 o'clock p.m. of said day, or so soon thereafter as counsel can be heard, the defendant will bring on for hearing the within motions.

Dated: March 1, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

I.

MOTION FOR ORDER AUTHORIZING AND
DIRECTING ISSUANCE OF SUBPOENAS
REQUIRING ATTENDANCE OF WIT-
NESSES IN A FOREIGN COUNTRY AT
THE TRIAL HEREIN AT THE EXPENSE
OF THE GOVERNMENT AND FOR SERV-
ICE THEREOF

The defendant, Iva Ikuko Toguri d'Aquino, moves the Court for its order authorizing and directing the issuance of subpoenas requiring the attendance of the hereinafter named witnesses, residing abroad at the places hereinafter set forth, at the trial herein at the expense of the plaintiff, the U. S. Government, and for the service of said process of court.

The names, addresses and nationalities and citizenship of the witnesses whose names are known to defendant and the necessary and material testimony the defendant expects them to give at the trial herein are as set forth in the affidavit of the defendant filed in support of this motion which hereby is incorporated herein by reference. Each of the said witnesses named in said affidavit, together with others whose names are not presently known to defendant, is a necessary and material witness for the defendant on the trial of this cause and a witness whose testimony is necessary and material to the defendant in her defense to said action, the materiality of their testimony being set forth in the

defendant's affidavit filed in support of this motion.

The defendant cannot safely proceed to a trial of said action without the production of the person of each of said witnesses in court at the trial herein to testify in person so that their individual testimony, attitudes and demeanors can be observed, considered and weighed by the Court and the jury. The failure of the Court to order the production of said witnesses at the trial herein and the failure of the Government to produce or allow them to be produced at the expense of the Government will result in a failure of justice and deprive the defendant of her substantial constitutional and statutory rights to a fair and impartial trial and to obtain witnesses in her favor, in violation of the provisions of the Sixth Amendment and the due process guaranty of the Fifth Amendment of the Constitution.

II.

MOTION TO DISMISS THE INDICTMENT

In the event the defendant's foregoing Motion No. I is denied the defendant moves the Court to dismiss the indictment and discharge the defendant from custody on the grounds that the denial thereof deprived the Court of jurisdiction to proceed in the cause and that it deprived the defendant of her right to a fair and impartial trial by jury and of her right to obtain witnesses in her own defense, in violation of the provisions of the Sixth Amendment and of the due process guaranty of the Fifth Amendment of the Constitution.

III.

MOTION THAT COURT CONDUCT PART OF
TRIAL BY JURY IN TOKYO, JAPAN,
HONG KONG, CHINA, and SYDNEY, AUS-
TRALIA

In the event the foregoing Motion No. II is denied the defendant moves the Court to order part of the trial of the defendant by jury to be held and conducted in Tokyo, Japan, Hong Kong, China, and Sydney, Australia, to suit the convenience of the citizen and alien witnesses residing in said foreign countries whose names, residences and nationalities are set forth in defendant's affidavit filed in support of this motion and whose testimony is necessary and material to her defense at her trial herein, as also set forth in said affidavit, and for the purpose of obtaining said testimony, at the expense of the United States government and that the travel expenses and subsistence expenses of defendant's attorney for representing her thereat be defrayed by the United States government for the reason that she cannot bear said expenses or any part thereof, as appears by the affidavit of the defendant filed in support of this motion.

IV.

MOTION TO DISMISS THE INDICTMENT

In the event the defendant's foregoing Motion No. III is denied the defendant moves the Court to dis-

miss the indictment upon the grounds that the Court thereby lost jurisdiction to proceed in the cause, and that such effectively has deprived the accused defendant of her right to a fair, speedy and impartial public trial, by an impartial jury in the District and deprived her of the right to have compulsory process for obtaining witnesses in her favor, in violation of the provisions of the Sixth Amendment and the due process of law guaranteed to her by the Fifth Amendment of the Constitution.

V.

MOTION TO POSTPONE TRIAL OF THE
CAUSE AND EITHER TO DISCHARGE
DEFENDANT FROM CUSTODY OR TO
ADMIT HER TO BAIL PENDING SUCH
TIME AS THE GOVERNMENT PROVIDES
FOR THE PRODUCTION OF DEFEND-
ANT'S WITNESSES FROM ABROAD TO
TESTIFY IN PERSON AT THE TRIAL
HEREIN

In the event the defendant's foregoing Motion No. IV is denied the defendant moves the Court to postpone the trial of the cause and either to discharge the defendant from custody or to admit her to bail pending such time as the government provides for the production of defendant's witnesses from abroad at the expense of the Government upon the grounds that the Court has no jurisdiction to pro-

ceed further with the trial of said cause and that to compel the defendant to stand trial under such circumstances deprives her of a fair, speedy and impartial trial and to have compulsory process for obtaining witnesses in her favor, in violation of the provisions of the Sixth Amendment and the due process of law guaranty of the Fifth Amendment of the Constitution.

VI.

MOTION TO DISMISS THE INDICTMENT

In the event the defendant's foregoing Motion No. V is denied the defendant moves the Court to dismiss the indictment and discharge the defendant from custody on the grounds the denial thereof deprived the Court of jurisdiction to proceed in the cause and that it deprived the defendant of her right to a fair and impartial trial by jury and deprived her of the right to obtain witnesses in her own defense, in violation of the provisions of the Sixth Amendment and of the due process guaranty of the Fifth Amendment of the Constitution.

VII.

MOTION FOR ORDER AUTHORIZING AND DIRECTING ISSUANCE OF SUBPOENAS REQUIRING ATTENDANCE OF WITNESSES ABROAD AT THE TAKING OF THEIR DEPOSITIONS AND PROVIDING FOR THE TAKING OF DEPOSITIONS OF FOREIGNERS AND CITIZENS ABROAD, AT THE EXPENSE OF THE GOVERNMENT, INCLUDING THE EXPENSES OF TRAVEL AND SUBSISTENCE OF DEFENDANT'S ATTORNEY AND INVESTIGATOR-INTERPRETER FOR INTERVIEWING WITNESSES AND FOR ATTENDANCE AT THE EXAMINATIONS

In the event the defendant's foregoing Motion No. VI is denied, the defendant moves the Court, under Rule 17 of the Rules of Criminal Procedure, for its order authorizing and directing the issuance and service of subpoenas for the taking of the oral depositions of the hereinafter named persons who reside in the foreign countries shown after their names and who, according to the best knowledge, information and belief are citizens of the United States, Portugal, France, Australia or Great Britain, or Japan, as shown in the affidavit of the defendant filed in support of this motion, to be taken in Tokyo, Japan, and elsewhere in Japan, in Hong Kong, China, and Sydney, Australia, respectively, at the expense of the United States government on the grounds and

for the reason that the defendant cannot bear the expense thereof;

The defendant also moves the Court for the expenses of travel from San Francisco, California, to Tokyo, Japan, Hong Kong, China, and Sydney, Australia, and return therefrom, and subsistence of her attorney for attendance at the examinations of said witnesses on the taking of said depositions at the expense of the United States government on the grounds and for the reason that the defendant cannot bear the expense thereof;

The names of the witnesses whose depositions the defendant desires to be taken, their nationalities insofar as known to defendant and her counsel, their places of residence and the place where their depositions can be taken are as follows:

Name	Nationality	Residence	Place of Deposition
1. Hon. Lars Tillitse	Danish	Tokyo, Japan	Tokyo, Japan
2. Hon. J. A. Abranches Pinto	Portuguese	Tokyo, Japan	Tokyo, Japan
3. S.Lt. Nicklos Schenk	Dutch	Tokyo, Japan	Tokyo, Japan
4. Mr. Takano	Japanese	Tokyo, Japan	Tokyo, Japan
5. Mr. George Togasaki	Japanese	Tokyo, Japan	Tokyo, Japan
6. Ruth Sumi Hayakawa	Japanese	Tokyo, Japan	Tokyo, Japan
7. Mr. Ken Inouye	U.S. Citizen	Tokyo, Japan	Tokyo, Japan
8. Mr. Kazuya Matsumiya	Japanese	Tokyo, Japan	Tokyo, Japan
9. Sr. Jose Filomino d'Aquino	Portuguese	Atsugi, Japan	Tokyo, Japan
10. Sra. Maria d'Aquino	Portuguese	Atsugi, Japan	Tokyo, Japan
11. Mr. Thaddeus d'Aquino	Portuguese	Hong Kong, China	Hong Kong, China
12. Felipe J. d'Aquino	Portuguese	Tokyo, Japan	Tokyo, Japan
13. Mrs. Unami Kido	Japanese	Tokyo, Japan	Tokyo, Japan
14. Miss or Mrs. Yoneko Matsunaga	Japanese	Tokyo, Japan	Tokyo, Japan
15. Charles Yoshii	Japanese	Tokyo, Japan	Tokyo, Japan
16. Miss Founy Saisho	Japanese	Tokyo, Japan	Tokyo, Japan
17. Mr. Hisashi Moriyama	Japanese	Tokyo, Japan	Tokyo, Japan
18. Mr. Katsuo Okada	Japanese	Tokyo, Japan	Tokyo, Japan

Name	Nationality	Residence	Place of Deposition
19. Mr. Mugio Hattori	Japanese	Tokyo, Japan	Tokyo, Japan
20. Mr. George Nakamoto	Japanese	Tokyo, Japan	Tokyo, Japan
21. Gen. Douglas MacArthur	U.S. Citizen	Tokyo, Japan	Tokyo, Japan
22. Maj. Gen. Charles Willoughby	U.S. Citizen	Tokyo, Japan	Tokyo, Japan
23. U.S. Army Officer in Charge of Sugamo Prison	U.S. Citizen	Tokyo, Japan	Tokyo, Japan
24. U.S. Army Officer in Charge of Yokohama Prison	U.S. Citizen	Yokohama, Japan	Tokyo, Japan
25. Father Desmoulins	French	Tokyo, Japan	Tokyo, Japan
26. Dr. Y. Amano	Japanese	Tokyo, Japan	Tokyo, Japan
27. Dr. Fumi Amano	Japanese	Tokyo, Japan	Tokyo, Japan
28. Mrs. Miyeko Oki, nec Furuoya	Japanese	Tokyo, Japan	Tokyo, Japan
29. Mr. Ken Oki	Japanese	Tokyo, Japan	Tokyo, Japan
30. Mr. K. Uno	Japanese	Tokyo, Japan	Tokyo, Japan
31. Mr. Ken Ishii	Japanese	Tokyo, Japan	Tokyo, Japan
32. Miss Mary Ishii	British	Tokyo, Japan	Tokyo, Japan
33. Chief of Police Setagaya Ku, Tokyo, Japan	Japanese	Tokyo, Japan	Tokyo, Japan

Name	Nationality	Residence	Place of Deposition
34. Chief of Police, Shiba Ward, Tokyo, Japan.....	Japanese	Tokyo, Japan	Tokyo, Japan
35. Chief of Police, Atsugi, Japan	Japanese	Atsugi, Japan	Tokyo, Japan
36. Chief of Metropolitan Police, Tokyo, Japan	Japanese	Tokyo, Japan	Tokyo, Japan
37. Officer in Charge of Kempeitai records, Tokyo, Japan	Japanese or U.S. Citizen	Tokyo, Japan	Tokyo, Japan
38. Mr. Hanamaki Tozaki	Japanese	Tokyo, Japan	Tokyo, Japan
39. Charles C. Cousens	British	Sydney, Australia	Sydney, Australia
40. John Holland	British	Hong Kong, China	Hong Kong, China
41. General Manager or sub- ordinate officer in charge of employment and com- pensation records of Radio Tokyo, Tokyo, Japan	Japanese	Tokyo, Japan	Tokyo, Japan
42. Mr. Hifumi	Japanese	Japan	Tokyo, Japan
43. Mr. Takabataki	Japanese	Japan	Tokyo, Japan

This motion is made upon the ground that each of the named witnesses is a necessary and material witness for the defendant on the trial of said action and a witness whose testimony is necessary and material to the defendant in the defense of said action.

The facts to which each of said witnesses is expected to testify and the materiality of that testimony is set forth in the affidavit of the defendant filed in support of this motion and is incorporated herein by reference for said purposes.

The defendant cannot safely proceed to trial of said action without the testimony of said witnesses.

The taking of said depositions is the sole remaining avenue available to the defendant to obtain the testimony of said witnesses which is material and necessary to her defense at the trial herein and which is not available to defendant from any other source or sources save and except said witnesses who are in foreign countries, a majority of whom are in Japan from whence defendant was brought by agents of the United States, away from her home, husband, friends and witnesses.

Therefore, defendant moves that a commission issue to the United States Consul at Yokohama, Japan, or Kobe, Japan, for the purpose of taking the depositions of the aforesaid witnesses in Japan, at Tokyo, Yokohama or Kobe, Japan, as shall to him be convenient, commencing on or about April 1, 1949, at an hour convenient to him, and to continue thereafter, until the depositions of each said witness shall have been taken, or that, in lieu of

said method of taking said depositions, the depositions of such witnesses be taken by stipulation between the parties hereto in Japan during April, 1949, at such places and in such manner, before any person the respective attorneys for the parties hereto there shall agree upon.

Defendant, by her attorney, represents to the Court that the attorneys for the plaintiff have informed her attorney herein that they are willing to consent that the depositions of the defendant's witnesses, whether said witnesses be citizens or aliens abroad, may be taken in Japan and also in Hóng Kong and that, for said purpose will there provide for an attorney for the U. S. Government to be present at the taking thereof and to represent the plaintiff thereon and to do what they can to expedite the issuance of the necessary passports and also military permits from SCAP, Tokyo, for defendant's attorney and representative to enter Japan and there locate and interview defendant's witnesses, whosoever they may be, and to take their depositions there by stipulation without requiring court orders first authorizing the taking of the depositions of each of the aforesaid witnesses and of each other person who may be found in Japan to be a witness for the defendant whose deposition the defendant or her attorney there may desire to take.

The failure or refusal of the Court to order and authorize the depositions of said witnesses to be taken abroad and the failure of the U. S. Government to enable such depositions to be taken abroad

at the expense of the Government will result in a failure of justice and deprive the defendant of her substantial constitutional and statutory rights to a fair and impartial trial and to obtain witnesses in her favor, in violation of the provisions of the Sixth Amendment and the due process of law guaranty of the Fifth Amendment of the Constitution.

VIII.

MOTION TO DISMISS INDICTMENT

In the event the defendant's foregoing Motion No. VII is denied, or the military permits for defendant's attorney therein mentioned is denied by SCAP, Tokyo, the defendant moves the Court to dismiss the indictment and discharge the defendant from custody on the grounds the denial thereof deprived the Court of jurisdiction to proceed in the cause and that it deprived the defendant of her right to a fair and impartial trial by jury and deprived her of the right to obtain witnesses in her own defense, in violation of the provisions of the Sixth Amendment and of the due process of law guaranty of the Fifth Amendment of the Constitution.

Each of the foregoing motions will be made and based upon the notice of these motions, said motions, affidavit in support of said motions, and upon all the records, pleadings, files, court orders and documents on file herein.

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

Points and Authorities in Support of Motions
Rules 15, 17 and 26, Rules of Criminal Procedure.
Compare, Rules 29 and 30, R.C.P.
Fifth Amendment, U. S. Constitution.
Sixth Amendment, U. S. Constitution.

Respectfully submitted,
/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTIONS

Northern District of California,
State of California,
City and County of San Francisco—ss.

Iva Ikuko Toguri d'Aquino, being first duly sworn, deposes and says: that she is the defendant in the above-entitled action and is detained under process of this Court, without bail, in San Francisco County Jail No. 3, Dunbar and Washington Streets, San Francisco, California; that she is an adult person over the age of twenty-one (21) years; that ever since on or about July 25, 1941, she has continuously resided in Tokyo, Japan, where, on April 19, 1945, she was lawfully united in marriage to one, Felipe J. d'Aquino, who then and ever since his birth has been and still is a national and citizen of Portugal residing in Tokyo, Japan; that she thereby and thereon, pursuant to the law of Portu-

gal, as also the law of Japan, as also by the law of all other civilized nations and by international law, became and ever since then continuously has been and now is a national and citizen of Portugal and in 1945 was formally naturalized as a Portuguese national by said marriage and by formal registration of said marriage as such a citizen of Portugal at the office of the Consul of Portugal at Tokyo, Japan; that ever since her said marriage she has resided at No. 396 Ikejiri Machi, Setagaya-Ku, Tokyo, Japan, with her said husband.

On August 26, 1948, defendant was arrested by agents of the United States, acting under orders of the Attorney General of the United States, and thereupon imprisoned in the Sugamo Prison, Tokyo, Japan, and thereafter was forcibly taken aboard the S. S. General F. R. Hodges, a U. S. transport vessel, on which she was brought to San Francisco, California, on September 25, 1948, and while said vessel was in progress of docking at said port she was seized by agents of the U. S. Federal Bureau of Investigation upon a purported complaint filed in this Court on September 25, 1948, was brought before the U. S. Commissioner in this District and thereafter was indicted in this cause which is now pending in this court.

The defendant is an indigent; aside from used clothing and a few personal effects, the reasonable value of which does not exceed Twenty-five (\$25.00) Dollars, she possesses the following assets only, viz., the equivalent of the sum of approximately One

Hundred (\$100.00) Dollars on deposit in the Postal Savings Bank in Tokyo, jointly with her husband in Tokyo, Japan, household furniture, dishes, trunk, sewing machine and utensils of the reasonable value of One Hundred (\$100.00) Dollars, and a remote claim or right, subservient to the right of the Attorney General as the Alien Property Custodian, in and to certain real property situated in Los Angeles County, California, described as follows, to-wit:

Lots 42 and 57 of the South Gate Tract in the Rancho Tajauta, as per map recorded in Book 13. Pages 14 and 15 of Maps in the office of the County Recorder of said County, and portion of the 538.28 acre track of land allotted to Jose Maria Abila in the partition of Rancho Tajauta, Case number 1200 of the 17th Judicial District Court in the County of Los Angeles,

which said property she is informed and believes has an approximate market value of Three Thousand Five Hundred (\$3,500.00) Dollars, the interest of the defendant therein, however, being at most a disputable claim and hence of substantially no value whatever to her.

By reason of her said poverty and indigency the defendant does not have sufficient means and is actually unable to bear the expense of producing her witnesses, hereinafter named, of any of them, to testify in person in her defense at the trial herein, or to bear the expense of their travel, subsistence and witness fees for attending or to have served the subpoenas for the taking of their depositions or any of them.

By reason of her said poverty and indigency the defendant does not have sufficient means and is actually unable to bear the expense of the taking of oral depositions of her said witnesses, or of any of them, and is unable to bear either the expenses of travel or subsistence of her attorney for attendance at the said examinations and the taking of said depositions abroad.

That each of the witnesses, hereinafter named, and named in her motion for the production of defendant's witnesses at the trial herein and in the motion for the taking of depositions is a necessary and material witness for the defendant on the trial of said action and the testimony of each is necessary and material to the defendant in her defense of said indictment.

That the defendant cannot safely proceed to a trial of said action without the testimony of said witnesses.

The witnesses whose testimony is necessary and material to be given at the trial herein or to be given by the depositions to be introduced in evidence at the trial herein, their places of residence, their nationalities and citizenships which are unknown to defendant but which she believes to be as hereinafter set forth, and the material and necessary testimony they are expected to give, in substance and effect, are as follows:

1. The Hon. Lars Tillitse, a citizen of Denmark, Danish Representative to SCAP, Tokyo, Japan, to testify that defendant was employed from on or

about January 1, 1944, to sometime in May, 1945, by the Royal Danish Legation in Tokyo, Japan, while he was Danish Minister to Japan; to the facts and circumstances how her said employment arose; the hours of her said employment, the days she so worked and the nature and duties of her employment, the days she was absent from her work; the compensation paid to her for said services; the conditions under which she lived in Japan, to the fact that she was subjected to constant police surveillance by the Kempeitai, ward and metropolitan police departments in Tokyo; her physical and mental condition, as observed by him during said period; the facts of her marriage to a Portuguese national and citizen on April 19, 1945, her registration and naturalization as a Portuguese citizen at the Portuguese Consulate in Tokyo in 1945; statements made by her to him and conversations defendant had with him during said period relating to her citizenship, activities and loyalty to and sympathy with the United States and its and the Allied cause; and that her reputation for truth and veracity in the community in Japan where she resides is excellent.

2. The Hon. J. A. Abranches Pinto, a Portuguese citizen, Consul of Portugal, Tokyo, Japan, to testify he has been acquainted with the defendant from 1943 to date; that he attended the wedding of defendant to Felipe J. d'Aquino, a Portuguese citizen, at Sophia University Chapel, Tokyo, Japan,

on April 19, 1945; that said marriage was registered at the Portuguese Consulate in Tokyo in 1945; that by said marriage and the defendant's formal registration thereof in 1945 at said consulate defendant became a naturalized citizen of Portugal and ever since then has been a national and citizen of Portugal; to testify to her registrations there as such in 1946, 1947 and 1948; to identify and testify to the formal registration certificates issued to her during each of said years; to testify, as an expert witness, duly qualified so to do, that by the law of Portugal said marriage and said registration in 1945 by the defendant constituted her formal naturalization as a Portuguese national and citizen; that defendant was kept under constant surveillance by the Kempeitai, ward and metropolitan police in Tokyo and was compelled to report to said agencies repeatedly from 1943 to the conclusion of hostilities by Japan's surrender in 1945 to the Allied Powers; and that defendant's reputation for truth and veracity in the community in Japan where she resides is excellent.

3. S. Lt. Nicklos Schenk, a citizen of Holland, Custodian Officer, Netherlands Legation, General Liaison, G. H. Q., Tokyo, Japan, to testify that from late 1943 to August, 1945, he was acquainted with the defendant while he was held as a prisoner of war by the Japanese in Tokyo, Japan; that he was frequently, during said period of time, at the Radio Tokyo broadcasting offices; that he then was and is acquainted with the females who there broad-

cast on the Zero Hour program during said period of time; to testify to their names and addresses and to testify to the nature and content of their broadcasts and to identify them and to distinguish them from the defendant; that the recorded music played on the prisoner of war Zero Hour was lively in character and was calculated to and did bolster the morale of U. S. and Allied troops; that the defendant never committed any of the unlawful acts mentioned in the indictment herein; that the defendant neither by word nor deed did anything to injure, harm or betray the cause of the United States or its Allies; that a large number of Allied prisoners of war there were held by the Japanese under duress and were coerced into radio broadcasting for the Japanese; that, at great personal risk the defendant, during said period of time, secretly and repeatedly conveyed to U. S. and Allied prisoners of war, there held by the Japanese, news of the progress of U. S. and Allied armed forces and news of U. S. and Allied military and naval successes for the purpose of bolstering up their spirits, courage and hopes and secretly, at like great personal risk, supplied to them food, cigarettes, blankets and medicine; and that she gave comfort to said prisoners of war and aided them in their efforts to defeat the purposes of their Japanese oppressors and to testify to the nature, manner and details of that aid and comfort; and that during the whole of said period of time the defendant had it within her power to report the United States and Allied

prisoners of war to the Kempeitai for their broadcasting activities in aiding the U. S. and Allied cause and thereby betray them to the enemy but knowingly failed and refused so to do and thereby aided the U. S. and Allied cause by keeping said matters and things secret from the Japanese.

4. Mr. Takano, Tokyo, Japan, a Japanese citizen, to testify he was manager of the business office of Radio Tokyo from about August, 1943, to about May, 1945; that he has been acquainted with the defendant since sometime in August, 1943; that he, in late 1943, upon the suggestions and prompting of other persons whose names are not at this time known to defendant, and upon what affiant is informed and believes and therefore alleges upon information and belief to have been a command or order of Japanese Army officers, ordered and compelled defendant to accept employment designated by him at Radio Tokyo and that defendant was coerced into so doing under duress and over her repeated protests against complying therewith; that the Zero Hour radio program from its inception to its conclusion in August, 1945, was designed and used, by the U. S. and Allied prisoners of war who conducted that program, to aid and comfort the U. S. by giving them true information as to the whereabouts and condition of prisoners of war taken by the Japanese, and by giving such information to injure Japan; that the defendant never wrote or composed any radio script whatever; that the defendant never made any news or propaganda

broadcast by radio or otherwise at any time; that defendant was kept under continuous surveillance by the Kempeitai and was in continuous fear of the Kempeitai and had good reason so to be; that defendant never committed any of the overt or other unlawful acts alleged in the indictment; and never wrote, said or broadcast any statement or committed any act whatever against the U. S. and its Allies or their cause or any statement in favor of the Japanese; to testify to the dates and hours of defendant's employment during said period and the days she was absent therefrom.

5. Mr. George Togasaki, Editor, Nippon Times, Tokyo, Japan, a Japanese citizen, to testify that ever since August, 1944, he has been acquainted with the defendant; that between August, 1944, to about March, 1945, he was manager of the Zero Hour radio program at Radio Tokyo; to state the names and addresses of each female who was an announcer or radio broadcaster on said program during said period of time and to testify to the nature, contents and character of their respective broadcasts; to testify to the names of the person or persons who prepared the script for said broadcasting and to the nature, contents and character thereof; the rates of compensation, if any, paid for such services; to testify to the time defendant there was engaged, the type of work or services she performed, the hours, days and months of her employment, the days she was absent therefrom; rate of compensation; to distinguish the work of the female

announcers on said program from the work performed by defendant; to testify that defendant never said, announced or broadcast by radio any propaganda whatever for the Japanese or anything against the U. S. or its Allies or against the U. S. and Allied cause and that she never committed any of the overt or other unlawful acts alleged in the indictment herein; that during her employment defendant was held under constant surveillance by the Japanese secret police and that the work she performed was not voluntary but was coerced.

6. Ruth Sumi Hayakawa, Tokyo, Japan, a Japanese citizen, to testify that she, Ruth Sumi Hayakawa, was employed for several years prior to 1943 continuously until about August, 1945, as a staff announcer for Radio Tokyo; that she became acquainted with the defendant about August, 1943; that in excess of twenty U. S. and Allied prisoners of war held by the Japanese were forced under duress to become radio announcers for the Japanese at Radio Tokyo; that certain of those prisoners were forced, under duress and in order to save their lives, to become broadcasters for the Japanese; that there were a number of female broadcasters on the Zero Hour program; to testify to the names of the persons who prepared the radio script for broadcasting on the Zero Hour program and to the names of the males and females who broadcast thereon and the nature and contents of those broadcasts, the frequency of those broadcasts and to distinguish their activities and duties of employment from those

of the defendant; to testify that the defendant never at any time whatever prepared or wrote any radio script and was not qualified so to do; to testify who originated that program, the purpose and objective thereof and that the prisoners of war who were compelled to broadcast designed and conducted the Zero Hour prisoner of war program to serve the U. S. and Allied military cause and to defeat the purposes of the Japanese by broadcasting U. S. and Allied prisoner of war messages to U. S. and Allied troops giving names, whereabouts and conditions of U. S. and Allied nationals taken prisoner by the Japanese; that the defendant was repeatedly registered with the Japanese police departments and was under their constant surveillance and by the Kempeitai; that the defendant never said or did anything or broadcast anything whatever favorable to the Japanese and never said or did anything or broadcast anything against the U. S. or its Allies or against the U. S. and Allied cause; and that defendant never committed any of the unlawful acts alleged in the indictment.

7. Mr. Ken Inouye, Care: GHQ., P. I. Office, Tokyo, Japan, a U. S. citizen, to testify that he has been personally acquainted with the defendant since about August, 1948; that from August, 1943, to August, 1945, he frequently visited Radio Tokyo, knew a majority of the radio announcers there employed; that he very frequently during said period visited said office and listened to the Zero Hour radio programs; to testify to the nature and

character of that program and to identify the announcers thereon and the nature and contents of the broadcasts of each male and female announcer he heard thereon and the nature and types of music recordings; and to testify to the nature of the occupation of defendant at Radio Tokyo, the days she there worked during said period and the days she was absent therefrom and the cause of such absences.

8. Mr. Kazuya Matsumiya, Tokyo, Japan, Seta-gaya-ku, a Japanese citizen, to testify that he was the principal of the "School of Japanese Language and Culture" in Shiba Ward Tokyo; that defendant enrolled in said school in September, 1941, and attended said school continuously from said date until about December 31, 1942, for the purpose of learning the Japanese language; that when she first enrolled she was ignorant of written Japanese and could not read the written language and had a scant ability to speak colloquial Japanese; and that she made a little progress in reading and writing that language; and to testify to the hours during the day and the days she attended said school.

9. Sr. Jose Filomino d'Aquino, of Atsugi, Kanagawa Prefecture, Japan, a Portuguese citizen, to testify that he has known the defendant since June, 1943, and that up to August 15, 1945, saw and conversed with her on an average once per month; that she repeatedly during said time expressed to him her loyalty, sympathy and devotion to the U. S. and Allied cause and her opposition to

Japan; that he knew of his own knowledge that defendant was kept in fear of the Kempeitai and that she was under constant surveillance by that organization and by the Tokyo metropolitan police departments; to testify to the fact that the defendant during said period suffered from malnutrition and beri beri; and to testify that he became the father-in-law of defendant on April 19, 1945, when his son married the defendant in Tokyo.

10. Sra. Maria d'Aquino, of Atsugi, Kanagawa Prefecture, Japan, a Portuguese citizen, to testify to the same facts as her husband, above stated, except the last clause thereof; and that she became the mother-in-law of defendant on April 19, 1945, when her son married the defendant in Tokyo.

11. Mr. Thaddeus d'Aquino, Care Portuguese Consulate, Hong Kong (and Shanghai), China, a Portuguese citizen, to testify that he has been acquainted with the defendant since about July, 1942; that during various conversations had with the defendant in Tokyo, Japan, from that time until the spring of 1944, the defendant spoke to him and told him of her loyalty to the U. S. and sympathy with the cause of the U. S. and its Allies and of her constant opposition to Japan on an average of two to three times per week; that by reason of the marriage of his brother Felipe J. d'Aquino to defendant on April 19, 1945, he became the brother-in-law of defendant.

12. Felipe J. d'Aquino, 396 Ikejiri Machi, Seta-gaya-Ku, Tokyo, Japan, a Portuguese citizen, to testify he married defendant on April 19, 1945; that he has known her since 1942; that he married her in Tokyo on April 19, 1945; that by virtue of said marriage and her registration of said marriage as a Portuguese citizen at the Portuguese Consulate in Tokyo, Japan, in 1945, she formally was naturalized as a Portuguese citizen and national; that from Nov., 1943, to Aug. 15, 1945, he saw the defendant almost daily; that defendant repeatedly told him she was loyal and devoted to the U. S. and Allied cause; that she many times during said period secretly and at great personal risk delivered food, medicine and blankets to U. S. and Allied prisoners of war held by the Japanese; that he saw her at Radio Tokyo many times during said period and knows the nature of her employment; that he knows of his own knowledge and observation that the defendant never wrote any radio scripts and that she never committed any of the unlawful acts charged in the indictment.

13. Mrs. Unami Kido, 396 Ikejiri Machi, Seta-gaya-Ku, Tokyo, Japan, a Japanese citizen, to testify she has been acquainted with the defendant since about October, 1944, to date; that the defendant rented two rooms from her since that time; that she saw and talked to defendant almost daily between then and August 15, 1945, that she knows of her own personal knowledge and observation that Japanese police agents and the Japanese secret police, the Kempeitai, maintained a constant surveil-

lance over defendant during said period and that defendant was in constant fear of them; that during said period of time defendant continually told her the United States would win the war against Japan and that she hoped the U. S. would win quickly; that she knows of her own knowledge and observed that the defendant would not contribute anything whatever to Japan or the Japanese people that in anywise could be deemed to aid it or them in any manner; that defendant refused to contribute old clothes to Japan; that she refused to make any voluntary money contributions to Japan; that the defendant would not voluntarily cooperate with any request of the Japanese authorities, neighborhood associations or organizations; that defendant refused to attend fire drills and public meetings; that Japanese police agents questioned this witness repeatedly about the activities of the defendant, about what the defendant did, her visits, who she visited, who visited her and what the substance of her conversations with other persons were; that neighbors and police agents termed the defendant as a spy against Japan and held her up to public hatred; that defendant kept her constantly informed during said period of time of the progress of the U. S. and Allied troops and told her that anything she read in the Japanese papers or heard on the radio to the contrary was nothing but false Japanese propaganda; that she knows of her own personal knowledge and observation that the defendant took food to U. S. and Allied prisoners of

war held by the Japanese despite the fact that she risked her own personal security in so doing.

14. Miss or Mrs. Yoneko Matsunaga, Tokyo, Japan, a Japanese citizen, to testify that from about August, 1944, to August, 1945, she was engaged as a radio announcer at Radio Tokyo; that she had been acquainted with the defendant since August, 1944, that her voice is almost identical in timbre, tonal quality and frequency range as that of the defendant and that she knows this fact to be true of her own knowledge by virtue of tests made thereon and that her voice frequently during said period of time has been confused with and been mistaken for that of the defendant; that she knows of her own knowledge and observation that the defendant never wrote any radio script and that defendant was not competent to write such script; that defendant never broadcast any news, news commentaries or propaganda for the Japanese; that defendant never committed any of the acts and things alleged in the indictment.

15. Charles Yoshii, Tokyo, Japan, a Japanese citizen, to testify that he was employed at Radio Tokyo during 1943 to August, 1945; that he has been acquainted with the defendant since about August, 1943; to testify to the nature, time, hour, and character of the Zero Hour radio program during said period; the names of the persons participating therein, including the males and females and the nature, extent and character of the participation of each; that the defendant never wrote or

composed any radio script of any character whatever and had neither the training nor the ability to write radio script; the nature, character, extent and time and duties of defendant's employment; that defendant never broadcast or uttered any statement or did any of the unlawful things charged in the indictment and that *the* never broadcast any news, news commentaries or propaganda for the Japanese and never uttered any statement or broadcast any statement derogatory to the U. S. and its allies or to the U. S. and allied cause and never uttered any statement or broadcast any statement in anywise favorable to Japan or its war effort.

16. Miss Foumy Saisho, Nippon Times, Tokyo, Japan, a Japanese citizen, to testify that she was a translator for Radio Tokyo from early 1943 to Aug., 1945; that she has been acquainted with the defendant since August, 1943; that she is acquainted with all the U. S. and Allied prisoners of war who were coerced into broadcasting for the Japanese at Radio Tokyo during that time; to state the names of each and every male and female who broadcast on the Zero Hour program, the nature, contents and character of their broadcasts and to distinguish the activities and employments of each of those females from the defendant; to testify that the defendant never wrote or composed any radio script and that she was not qualified so to do; that the defendant never ad libbed on the radio and that she never broadcast any news or propaganda for the Japanese or any matter of thing that was favor-

able to the Japanese or against the United States and its Allies; that the defendant never did anything whatever to help Japan; that in conversations with the defendant during said period of time the defendant stated to her that she was opposed to Japan.

17. Mr. Hisashi Moriyama, Tokyo, Japan, a Japanese citizen, and now a band leader in Tokyo; to testify that he has been acquainted with the defendant since about June, 1944; that he was employed at Radio Tokyo at that time and until August 15, 1945; that he was acquainted with the writers and composers of the radio script used on the Zero Hour program; that the defendant never wrote or composed any of that script or any other radio script; that he knows the nature, contents and character of all the radio script used on that program and to testify thereto; that he was acquainted with each of the females who broadcast on that program and the nature and contents of their broadcasts and the duties they performed; that the defendant never made any news or propaganda broadcasts for the Japanese and never broadcast anything detrimental to or against the United States and its Allies.

18. Mr. Katsuo Okada, Tokyo, Japan, a Japanese citizen, to testify that he has been acquainted with the defendant since about October, 1944, and that he conversed with her on an average of once per week from then until August 15, 1945, in Tokyo, Japan; that the defendant on practically each of

those occasions told him Japan would lose the war, that anything he read in Japanese newspapers to the contrary was false propaganda; that she repeatedly told him of U. S. and Allied successes in the war; that the defendant at all times was loyal to the United States and its Allies and opposed to Japan.

19. Mr. Mugio Hattori, Tokyo, Japan, a Japanese citizen, to testify that he visited the defendant in Tokyo approximately once per month from July, 1941, to Dec. 8, 1941, and thereafter seven or eight times in 1944, and up to August 15, 1945; that she repeatedly informed him she was loyal to the United States and its Allies and opposed to Japan, that the United States would defeat Japan, that Japan was the cause of the war and informed him that Japanese reports of Japan's successes in the war were false; that the United States and the Allies were gaining and would win the war and that she hoped the U. S. would win the war quickly; that he repeatedly informed the defendant that she should not talk too much against Japan or she would be jailed.

20. Mr. George Nakamoto, Tokyo, Japan, a Japanese citizen, to testify that he has been acquainted with the defendant since about November 1, 1943; that he formerly was in charge of the Zero Hour program at Radio Tokyo from November, 1943, to the fall of 1945; that sometime about November, 1943, he brought and delivered to Radio Tokyo an order or command from the Japanese

Army headquarters to Mr. Takano, then manager of the business office of Radio Tokyo, ordering him to force the defendant to take a radio voice test; to testify to the purpose of said test and the contents of said order and the maker of said order; that said Takano coerced defendant into such a test, and that defendant took the test under duress and over her protests; to testify to the names of the males and females who conducted the Zero Hour radio program; how that program originated, and its purpose, and that the U. S. and Allied prisoners of war who were coerced into broadcasting by the Japanese authorities converted the Zero Hour program into a program designed and utilized to aid the cause of the Allies by bolstering up the morale of U. S. and Allied troops by playing lively American and European music and broadcasting messages of U. S. and Allied prisoners of war; to testify to the nature and duties of defendant's occupation during said period of time, the nature and character of her employment, the hours and days she worked and her absences therefrom; that defendant never wrote or composed any radio script; that defendant never did anything and never broadcast anything disloyal to the United States or its Allies; that the defendant was kept under close surveillance by the Kempeitai and metropolitan police; that the defendant was loyal to the cause of the U. S. and its Allies and opposed to Japan.

21. Douglas MacArthur, Supreme Commander Allied Powers, and General, U. S. Army, G. H. Q.,

Tokyo, Japan, an American citizen, or his nominee, to testify whether or not he or any military officer under his command ordered or authorized the seizure of the defendant by U. S. troops on or about September 5, 1945, and their detention and questioning of her on said date and on September 6, 1945, at the Yokohama New Grand Hotel in Yokohama, Japan, and, if so, under what authority or process; and also to testify whether or not any written authority or process issued for such purposes and, if so, the nature and contents thereof and to have the same read into evidence in this proceeding;

And also to testify whether or not he, or any military officer under his command, ordered or authorized the arrest of the defendant by U. S. troops on or about October 17, 1945, at her home at No. 396 Ikejiri Machi, Setagaya-Ku, Tokyo, Japan, her imprisonment from said date to November 16, 1945, in the Yokohama Prison, Yokohama, Japan, and thereafter from November 16, 1945, to October 25, 1946, in the Sugamo Prison, Tokyo, Japan, on which latter date she was released and restored to her liberty, and, if so, under what authority or process was said arrest made, said imprisonment inflicted upon her and her said release made, and also whether or not said arrest was made upon any charge or charges preferred against her and, if so, by whom and what was the nature and contents thereof; whether or not she was given any hearing or trial on any such charge or charges

and, if so, when and before what tribunal; and to testify to what sentence or punishment was meted out to her and upon what authority; and to produce or have produced and read into evidence in this proceeding the records relating to the defendant's said arrests, the charges preferred against her, if any, the hearings or trial of defendant and sentence or punishment imposed upon her, the said two imprisonments and the releases of defendant from said imprisonments.

22. Major General Charles Willoughby, U. S. Army, Chief of the Counter Intelligence Corps, U. S. Army, GHQ., Tokyo, Japan, an American citizen, or his nominee, to testify to the same facts hereinabove set forth as being the testimony defendant expects from General Douglas MacArthur, U. S. Army, and to produce such records and read them into evidence herein.

23. U. S. Army Officer in Charge of Sugamo Prison, Tokyo, Japan, an American citizen, to testify to the facts and records concerning the imprisonment of the defendant in said prison from on or about November 16, 1945, to October 25, 1946; the authority for said imprisonment and release therefrom on October 25, 1946, the charges, if any, preferred against her, the name of her accuser, if any, whether or not she was accorded a hearing or trial thereon and, if so, by whom and under what authority; the process or authority under which she there was confined for said period of time; the nature and circumstances of her release from said

imprisonment; and to produce the official records of said prison relating to said incarceration and release of the defendant and to read them into evidence in this proceeding;

And also to testify to the facts and records relating to the confinement of defendant in said prison from on or about August 26, 1948, to September 3, 1948; the authority and process, if any, for said confinement, and to read said records into evidence in this proceeding.

And the same officer, if he is in charge of the Yokohama Prison records from Oct. 17, 1948, to Nov. 15, 1948, to testify to the facts covered in Paragraph 22 hereof.

24. U. S. Army Officer in Charge of Yokohama Prison, Yokohama, Japan, a U. S. citizen, to testify to the records of said prison concerning the incarceration of the defendant there from on or about October 17, 1945, to on or about November 16, 1945; to testify on what authority she was so incarcerated for said period of time, to testify whether or not any formal written or oral charges were preferred against her or any accusation made against her out of which said incarceration and commitment arose; the nature and contents of any such charge or accusation; who or what authority preferred such charge against her; to testify whether or not defendant was accorded any hearing or trial out of which said commitment and imprisonment arose; and to produce the official records of said prison relating to

said incarceration and commitment of the defendant and to read them into evidence in this proceeding.

25. Father Desmoulins, Sophia University Chapel, Tokyo, Japan, a citizen of France, to testify that the defendant studied Catholicism and received religious instruction from the Catholic priesthood at Sophia University Chapel from February, 1945, to the end of April, 1945; the days and hours defendant there attended, and the time and place defendant was married to Felipe J. d'Aquino, a Portuguese national and citizen.

26. Dr. Y. Amano, near Camp Drake, Tokyo, Japan, a Japanese citizen, to testify he was defendant's attending physician from July 1, 1941, to August, 1945; to testify to defendant's medical history during said period of time and to her mental and physical condition; to show that defendant suffered from beri beri and malnutrition in 1943, and otitis media in 1944; to the loss of defendant's baby in 1948; to conversations with her in 1943 to Aug., 1945, in which she informed him that Japan was in the wrong in starting the war and that Japan would be defeated and that the U. S. would win; that she was loyal and devoted to the U. S. and Allied cause and was opposed to Japan; that she informed him that newspaper and radio reports *be* heard of Japanese war successes were false and that the truth was that the U. S. and its Allies were advancing successfully and would soon defeat

Japan and that she hoped for a quick U. S. victory over Japan.

27. Dr. Fumi Amano, a Japanese citizen, wife of Dr. Y. Amano, at his address, to testify to the same facts above outlined as to Dr. Y. Amano.

28. Mrs. Miyeko Oki, nee Furuya, Tokyo, Japan, a Japanese citizen, to testify she has been acquainted with the defendant since about March, 1944, that she was employed during November, 1943, and to August 15, 1945, at Radio Tokyo, where she saw and talked to defendant several times per week; that the defendant never wrote or composed any radio script and that she never broadcast anything disloyal to the United States or anything to aid the war efforts of Japan and that she never committed any of the unlawful acts charged or referred to in the indictment.

29. Mr. Ken Oki, Tokyo, Japan, a Japanese citizen, to testify that he was assistant manager of the Zero Hour radio program at Radio Tokyo, Japan, from about November 1, 1943, to the fall of 1944 when he became manager thereof until about August 15, 1945; that he has been acquainted with the defendant since about November 1, 1943; to testify to the names of the males and females who broadcast on the Zero Hour program and to the nature, contents and character of each of their radio announcements; to testify to the nature and character of defendant's employment at Radio Tokyo, the hours and days she was present and

the days she was absent, the compensation she received therefor; that the defendant never wrote or composed any radio script whatever and that she was not able so to do; that the defendant never broadcast or uttered any statement against the United States or its Allies or against the interests of the U. S. or its Allies; that she was loyal and sympathetic to the U. S. and Allied cause; that she never committed any of the unlawful acts alleged in the indictment.

30. K. Uno, Tokyo, Japan, a Japanese citizen, to testify that he was frequently at Radio Tokyo, Tokyo, Japan, from November, 1943, to about February, 1945; that he was acquainted with the defendant during said period of time; that he knows of his own knowledge and observation that the defendant never wrote any radio script and never said, uttered or broadcast any statement or statements against the U. S. and its Allies or against the U. S. and Allied cause; that she never committed any of the unlawful acts specified or referred to in the indictment; that the defendant was compelled to accept her employment at Radio Tokyo under duress and that she protested against her said employment but was coerced into it by Mr. Takano, manager of the business office of Radio Tokyo, on or about November, 1943.

31. Mr. Ken Ishii, Tokyo, Japan, a Japanese citizen, to testify that he was employed at Radio Tokyo, Japan, in 1944; that he has been acquainted with the defendant since about January, 1944; what

while he was so employed he knows of his own knowledge and observation that the defendant neither wrote nor composed any radio script and that she did not broadcast or do any of the unlawful acts alleged in the indictment.

32. Miss Mary Ishii, Tokyo, Japan, a British citizen, sister of said Ken Ishii, to testify she was employed at Radio Tokyo, Japan, from about February, 1945, to about August 15, 1945; that she has been acquainted with the defendant from about February, 1945; that she saw the defendant almost daily from then to August 15, 1945, and very frequently talked to her; that the defendant never wrote or composed any radio script and never said, uttered or broadcast any news or propaganda for the Japanese.

33. Chief of Police, Setagaya Ward, Tokyo, Japan, a Japanese citizen, to testify that the records of his department show several registrations thereby by the defendant; to testify to the facts of said registrations from the original records thereof and to read the written registrations into evidence; to testify to the purpose for which said registrations were made and under what authority they were required to be made; and to testify that said police department from July, 1941, to August, 1945, investigated the defendant, her activities and movements and kept her under constant surveillance and to testify to the purpose and reasons therefor and to testify that the defendant was regarded as being

dangerous to the security of Japan and as a spy for the U. S., and to produce and read said records into evidence in this action.

34. Chief of Police, Shiba Ward, Tokyo, Japan, a Japanese citizen, to testify that the records of his department show several registrations thereby by the defendant; to testify to the facts of said registrations from the original records thereof and to read the written registrations into evidence; to testify to the purpose for which said registrations were made and under what authority they were required to be made; and to testify that said police department from July, 1941, to August, 1945, investigated the defendant, her activities and movements and kept her under constant surveillance and to testify to the purpose and reasons therefor and to testify that the defendant was regarded as being dangerous to the security of Japan and as a spy for the U. S., and to produce and read said records into evidence in this action.

35. Chief of Police, Atsugi, Japan, a Japanese citizen, to testify that the records of his department show several registrations thereby by the defendant; to testify to the facts of said registrations from the original records thereof and to read the written registrations into evidence; to testify to the purpose for which said registrations were made and under what authority they were required to be made; and to testify that said police department from July, 1941, to August, 1945, investigated the defendant, her activities and movements and kept her under

constant surveillance and to testify to the purpose and reasons therefor and to testify that the defendant was regarded as being dangerous to the security of Japan and as a spy for the U. S., and to produce and read said records into evidence in this action.

36. Chief of Metropolitan Police, Tokyo, Japan, a Japanese citizen, to testify that the records of his department show several registrations thereof by the defendant; to testify to the facts of said registrations from the original records thereof and to read the written registrations into evidence; to testify to the purpose for which said registrations were made and under what authority they were required to be made; and to testify that said police department from July, 1941, to August, 1945, investigated the defendant, her activities and movements and kept her under constant surveillance and to testify to the purpose and reasons therefor and to testify that the defendant was regarded as being dangerous to the security of Japan and as a spy for the U. S., and to produce and read said records into evidence in this action.

37. Officer in Charge of the records of the Kempeitai, Tokyo, Japan, either a U. S. or a Japanese citizen, to testify that the records of the Kempeitai show that the Kempeitai constantly investigated the history, activities and movements of the defendant from July, 1941, to August, 1945, and that it regarded the defendant as being a person dangerous to the security of Japan and as being a spy

for the United States and kept her under continuous surveillance during said period of time, and to produce and read said records into evidence in this action.

38. Mr. Hanamaki Tazaki, Tokyo, Japan, a Japanese citizen, to testify that he was a liaison agent between Japanese Army Headquarters and Radio Tokyo between Aug., 1943, and Aug., 1945; that, as such he was familiar with and knew the person or persons who originated and conducted the Zero Hour radio programs; to testify to the persons, male and female, who broadcast on that program, the nature, contents and character of those broadcasts during the life of said program; that said program was utilized by the U. S. and Allied prisoners of war who broadcast thereon as an instrument to serve the U. S. and Allied cause by broadcasting lively American and European musical records and reading messages of U. S. and Allied prisoners of war held by the Japanese so that the U. S. and Allied military authorities would learn that they survived death and learn of their whereabouts and that their relatives' morale would be boosted by learning they were alive.

39. Charles C. Cousens, 7 Bapaune Road, Mosman, Sydney, N.S.W., Australia, a citizen of Great Britain, to testify that he was a Major in the Australian Army held as a prisoner of war by the Japanese in Tokyo from early 1943 to Aug. 15, 1945; that he and some twenty-five (25) other U. S.

and Allied military and civilian personnel held as prisoners of war by the Japanese at Bunka Prison in Tokyo Bay, Tokyo, Japan, under duress and threats against their lives were coerced into acting as radio announcers and broadcasters at Radio Tokyo, Japan; that he and other prisoners of war so held under duress originated the Zero Hour program on or about November, 1943, which was a regular program thereon until Aug., 1945; that said program was designed and used by said prisoners of war for the purpose of aiding the U. S. and Allied cause and so was used during the whole of said period of time; that the music recordings broadcast over that program were of classical, semi-classical and popular American and European types of music of lively and familiar types they selected for the purpose of bolstering up the morale of U. S. and Allied troops who picked up the same in receivers and especially was this so because the troops had no other source of such music available to them; that the program was otherwise devoted to the broadcasting of messages from U. S. and Allied prisoners of war held by the Japanese to U. S. and Allied troops and civilians so that U. S. military authorities would learn of their survival and whereabouts and the morale of their relatives at the front and at home be heightened by the news of their survival; that Mr. Takano, acting on Japanese Army orders compelled the defendant, under duress and over her protests, to have a test made

of her voice at Radio Tokyo; that defendant was compelled to accept the employment designated for her by the Japanese authorities and accepted her employment under duress and over her repeated protests; that the defendant never wrote or composed any radio script; that she never broadcast any news, news commentaries or propaganda for the Japanese and never served the interests of Japan; that she never said, uttered or broadcast any statement or statements derogatory to or against the U. S. or its Allies or against the U. S. and Allied cause; that the defendant never committed any of the unlawful acts alleged or referred to in the indictment; that he talked to the defendant almost daily from about November, 1943, to about June, 1944, and almost daily the defendant stated she was hoping the U. S. and its Allies would soon defeat the Japanese and that the U. S. would defeat Japan, that she was loyal to the U. S. and its Allies and the U. S. and Allied cause; that the defendant at risk of great personal danger to herself secretly conveyed food, medicine and clothing to prisoners of war in need thereof; that the defendant was constantly under surveillance by the Kempeitai and metropolitan police.

40. John Holland, Hong Kong, China, a British citizen, to testify that he was a prisoner of war held by the Japanese in Tokyo in 1943 to 1945; that he has been acquainted with the defendant since about November, 1943; that he was present at the

time and place Mr. Takano, then manager of the business office of Radio Tokyo, decided to order the defendant to accept the employment he and others had selected her for without her knowledge; that when informed thereof by Mr. Takano the defendant protested acceptance thereof and that thereupon Mr. Takano threatened her and thereafter, she, under duress and over her protests was compelled to comply; that the defendant never wrote any radio script; that she never committed any of the unlawful acts charged or referred to in the indictment.

41. The General Manager, a Japanese citizen, or subordinate officer under him having charge of the records of employment and compensation paid employees, of Radio Tokyo, Tokyo, Japan, to produce and to testify from and to read into evidence the records of said company showing the period of time the defendant was employed by said company, from 1943 to Aug., 1945, the days and hours she worked there, the capacity in which she worked, the days she absented herself therefrom; the rates of pay she received therefor; the time cards filled out by her and the original employment checks she received during said time.

42. Mr. Hifumi, a Japanese citizen, whose first name is unknown to affiant, but who was a Major in the Japanese Army in 1943 to 1945 and a friend of the above-mentioned Hanamaki Tazaki, and may

be located through him, to testify to the same facts defendant expects to elicit as testimony of said Hanamaki Tazaki.

43. Mr. Takabataki, a Japanese citizen, whose first name is unknown to affiant, but who was employed in the Japanese Foreign Office, to testify to the same facts defendant expects to elicit as testimony of said Hanamaki Tazaki.

Affiant is informed and believes and therefore alleges on such information and belief that each of the foregoing named witnesses, together with other witnesses in Japan who may be found to be necessary and material witnesses for the defendant, is ready, willing and able to come to San Francisco, California, to testify in person on behalf of the defendant at the trial herein provided his or her travel and subsistence expenses and witness fees will be defrayed, or to have his or her testimony taken by deposition abroad at his or her place of residence.

Affiant alleges that the failure or refusal of the Court to authorize the production of the said witnesses from abroad to testify in person for the defendant at the trial or the failure of the Government to authorize them to be produced for said purposes at the expense of the Government will result in a failure of justice and deprive her of a fair and impartial trial and of the right *of* obtain witnesses in her favor and of the due process of law guar-

anted her by the provisions of the Sixth and Fifth Amendments of the U. S. Constitution.

/s/ IVA IKUKO TOGURI
D'AQUINO,
Affiant.

Subscribed and sworn to before me this 1st day of March, 1949.

[Seal] /s/ C. W. CALBREATH,
Clerk, U. S. District Court, Northern District of California.

Receipt of copy acknowledged.

[Endorsed]: Filed March 1, 1949.

District Court of the United States, Northern
District of California, Southern Division

At A Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 14th day of March, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order that motion to take certain depositions be granted and that remaining motions be denied.)

This case came on for hearing of motion for subpoena, motion to take depositions. Defendant was present in custody of U.S. Marshal and with her attorney, Wayne Collins, Esq., Hon. Frank J. Hennessy, U. S. Atty., for U.S. After hearing the arguments of the attorneys, it is Ordered that said motion to take certain depositions be granted; and that the remaining motions be denied, in accordance with a signed order this day filed. Ordered defendant remanded to custody of U.S. Marshal.

[Title of District Court and Cause.]

Order Denying Seven Motions and Granting Defendant's Motion For Taking Depositions Abroad and Authorizing Expense Thereof and Travel and Subsistence Expenses of Defendant's Attorney For Attendance At Such Examinations

The eight consecutive motions of the defendant filed herein on March 1, 1949, coming on regularly to be heard the 14th day of March, 1949, Wayne M. Collins, Esq., appearing for the defendant and orally arguing in favor of the grant of each of said motions and Frank J. Hennessy, U.S. Attorney appearing for the plaintiff and arguing in opposition thereto, and the matter thereupon being submitted to the Court for decision and the matter being duly considered by the Court,

It Is Ordered, as follows:

(1) That defendant's Motion No. I entitled "Motion For Order Authorizing And Directing Issuance of Subpoenas Requiring Attendance of Witnesses In A Foreign Country At The Trial Herein At The Expense Of The Government And For Service Thereof" be and the same hereby is denied;

(2) That defendant's Motion No. II entitled "Motion To Dismiss The Indictment" be and the same hereby is denied;

(3) That defendant's Motion No. III entitled "Motion That Court Conduct Part of Trial By Jury In Tokyo, Japan, Hong Kong, China, and Sydney, Australia," be and the same hereby is denied.

(4) That defendant's Motion No. IV entitled "Motion To Dismiss The Indictment," be and the same hereby is denied.

(5) That defendant's Motion No. V entitled "Motion To Postpone Trial Of The Cause And Either To Discharge Defendant From Custody Or To Admit Her To Bail Pending Such Time As The Government Provides For The Production Of Defendant's Witnesses From Abroad To Testify In Person At The Trial Herein," be and the same hereby is denied.

(6) That defendant's Motion No. VI entitled "Motion To Dismiss The Indictment," be and the same hereby is denied.

(7) However, as to Motion No. VII entitled "Motion For Order Authorizing And Directing Issuance Of Subpoenas Requiring Attendance Of Witnesses Abroad At The Taking Of Their Depositions And Providing For The Taking Of Depositions Of Foreigners and Citizens Abroad, At The Expense Of The Government, Including The Expenses Of Travel And Subsistence Of Defendant's Attorney And Investigator-Interpreter For Interviewing Witnesses And For Attendance At The Examinations," the Court finds that the defendant is indigent and does not have sufficient means and is actually unable to pay the fees of her witnesses for her defense and cannot bear the expense of the taking of the depositions of her witnesses in Japan and Hong Kong; that the witnesses named in her motion and affidavit in support thereof are material and necessary witnesses for her and that their testimony and evidence is necessary and material for her defense at the trial of the cause; that she cannot safely proceed to trial of said action without the testimony of said witnesses and the production of the documentary evidence mentioned in said affidavit; that she cannot bear the expenses of travel and subsistence of her attorney for attendance at the said examinations, that is, at the taking of said depositions, and that the plaintiff consents that the depositions of defendant's witnesses in Japan and Hong Kong there may be taken before any person, at any time or place, upon any notice, and in any manner, commencing on or about April 3, 1949, and continuing thereafter daily until completed, as coun-

sel for the respective parties, or their associates or representative attorneys there shall agree, and counsel for the parties having informed the Court they will execute and file herein a written stipulation thereto within a reasonable time, and the Court finding and concluding that the failure or refusal of the Court to order or authorize the taking of said depositions at the expense of the United States Government and the payment of her counsel's travel and subsistence expenses to attend the taking of said depositions at the expense of the United States Government would deprive the defendant of substantial rights and would result in a failure of justice and that, therefore, defendant's said Motion No. VII should be granted, save and except her request for travel and subsistence expenses for an investigator-interpreter to accompany her counsel to assist him in locating witnesses, obtaining their statements and acting as interpreter and translator for him from English into Japanese and Japanese into English in connection therewith which is denied,

Wherefore It Is Ordered as follows:

(a) That the oral depositions of each of the witnesses for the defendant named in said motion, or such of them as the defendant or her counsel may deem necessary, together with the oral depositions of such other witnesses for the defendant as her counsel may wish to take in Japan and Hong Kong there shall be taken before any person, at any time or place, upon any notice, and in any manner,

commencing on or about April 3, 1949, and continuing thereafter daily until completed in Japan and Hong Kong, as counsel for the defendant and counsel for the plaintiff, or their associate or representative attorneys there shall agree upon;

(b) That the expense of the taking of said depositions, estimated not to exceed the sum of Three Thousand (\$3,000.00) Dollars, shall be paid by the United States Government.

(c) That the expenses of travel, estimated not to exceed the sum of One Thousand Eight Hundred (\$1,800.00) Dollars, together with subsistence expenses of Ten Dollars per day for a period of time estimated not to exceed Forty Five (45) days, amounting in the aggregate to a sum estimated not to exceed Four Hundred Fifty (\$450.00) Dollars, of the defendant's attorney, Theodore Tamba, Esq., associated with Wayne M. Collins, Esq., for attending said examinations, that is, the taking of said depositions, shall be paid by the United States Government.

(8) That defendant's Motion No. VIII entitled "Motion To Dismiss Indictment" be and the same hereby is denied.

Dated: March 15th, 1949.

/s/ MICHAEL J. ROCHE,

United States District Judge.

Receipt of a copy of the above Order is hereby admitted this 15th day of March, 1949.

/s/ FRANK J. HENNESSY,

U. S. Attorney.

29 SF WA/CT-AO/ PBA

1949 Mar 23 p.m. 3:06

Teletype Division

Washington 3-23-49 506P

C. W. Calbreath, Clerk U.S. District Court SF

Re case Tokyo Rose, defendant's attorney Theodore Tamba authorized by court to travel to Japan and Hong Kong please deliver to him from your book necessary government transportation requests signed by you as issuing officer covering travel in accordance with court order of March 15, 1949.

ELMORE WHITEHURST.

15 1949

RVS 514P

San Francisco, Calif.

March 25, 1949.

Received from C. W. Calbreath, Clerk U.S. District Court, Government Travel request USca 30578 for air transportation from San Francisco, California to Hong Kong, China and return, in the sum of \$1,306.80.

/s/ THEODORE TAMBA.

[Endorsed]: Filed March 15, 1949.

[Title of District Court and Cause.]

STIPULATION TO TAKING ORAL
DESIGNATIONS ABROAD

It is stipulated between the parties hereto that the oral depositions of each and all of the defendant's witnesses mentioned in her motion for the production of said witnesses at the trial herein and for the taking of their depositions, which motions were filed herein on March 1, 1949, together with the oral depositions of any other witnesses who reside abroad in Japan, or Hong Kong, China, who hereafter may be designated by the defendant or her attorney, Wayne M. Collins, or his associate, Theodore Tamba, Esq., as such a witness, may be taken before any consular officer of the United States in Japan or Hong Kong, China, or before any other person or persons to be mutually decided on between the respective attorneys for the parties hereto while they are in Japan or Hong Kong for said purpose commencing on or about April 3, 1949, and continuing thereafter until completed, and that such be taken in any manner upon which they there may agree, provided however, that all objections of each of the parties hereto, including objections to the form of the questions propounded to witnesses, and to relevancy, materiality and competency thereof, and the defendant's objections to the use of the depositions or any part of the depositions

by the plaintiff on the plaintiff's case in chief, shall be reserved to the time of trial herein.

Dated: March 17, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

/s/ FRANK J. HENNESSY,
U.S. Attorney.

/s/ TOM DeWOLFE,
Sp. Asst. to the Attorney
General.

So Ordered: March 22nd, 1949.

/s/ MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed March 22, 1949.

[Title of District Court and Cause.]

NOTICE

To Frank J. Hennessy, United States Attorney, and
To Tom DeWolfe, Special Assistant to the At-
torney General, Attorneys for the Plaintiff:

You and each of you will please take notice that on Monday, the 11th day of April, 1949, at the Courtroom of the above-entitled Court, 3rd Floor, Post Office Building, 7th and Mission Streets, San Francisco, California, at the hour of 10 o'clock A. M. of said day, or so soon thereafter as counsel can be heard, the defendant will bring on for hearing the within motion.

Dated: April 5, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

MOTION FOR LISTS OF WITNESSES AND
VENIREMEN

The defendant moves this Court, under Title 18 USCA, Sec. 3432, (formerly Sec. 562), for the order of this Court forthwith requiring the plaintiff or its counsel to supply the defendant with a list of the names of the witnesses to be produced on the trial for proving the indictment herein together with a statement giving the place of abode of each such witness and also for its order requiring the plaintiff or its counsel to supply the defendant at least three entire days before the trial with a list of the veniremen stating the abode of each venireman.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Points and Authorities In Support Of Motion

Title 18 USCA, Sec. 3432 (formerly Sec. 562)
reads as follows:

“A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness.”

The provision is mandatory. See *Logan v. U. S.* 144 U. S. 263, 304, and *McNabb v. U. S.* (CCA-Tenn), 123 Fed. 2d. 848, 853, rev. on other grounds, 318 U. S. 332. The purpose of the statute is to enable a defendant to investigate the jurors and the witnesses.

Inasmuch as the majority of the plaintiff's witnesses who appeared for the plaintiff for grand jury purposes appear to have been brought by the Government from Japan and elsewhere outside the geographical jurisdiction of this Court it is to be presumed such witnesses, and others, will be produced as plaintiff's witnesses at the trial herein. Inasmuch as said witnesses are outside this judicial district and their names and places of abode have not been revealed to the defendant it will take defendant's counsel more than three days preceding the commencement of the trial to conduct an investigation of such witnesses abroad and outside the jurisdiction of this court.

Respectfully submitted,

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 5, 1949.

[Title of District Court and Cause.]

NOTICE

To Frank J. Hennessy, United States Attorney, and
To Tom DeWolfe, Special Assistant To the
Attorney General, Attorneys For the Plaintiff:

You and each of you will please take notice that on Monday, the 11th day of April, 1949, at the Courtroom of the above-entitled Court, 3rd Floor, Post Office Building, 7th and Mission Streets, San Francisco, California, at the hour of 10 o'clock A. M. of said day, or so soon thereafter as counsel can be heard, the defendant will bring on for hearing the within motion.

Dated: April 5, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

I.

MOTION FOR ORDER AUTHORIZING AND
DIRECTING ISSUANCE OF SERVICE OF
SUBPOENAS REQUIRING ATTEND-
ANCE OF WITNESSES AT THE TRIAL
HEREIN AT THE EXPENSE OF THE
GOVERNMENT

The defendant, Iva Ikuko Toguri d'Aquino, moves the Court for its order authorizing and directing the issuance and service of subpoenas requiring the

attendance of the hereinafter named witnesses, residing at the places hereinafter set forth, at the trial herein at the expense of the plaintiff, the U. S. Government.

The names, addresses and places of residence of the said witnesses are as follows:

1. George H. Henshaw, 2025 Benedict Canyon Drive, Beverly Hills, California.

2. Chiyeko Ito, 3118 Blanchard Street, Los Angeles 33, California.

3. Amy Masuda, Los Angeles, California.

4. James F. Whitten, Torrance, Los Angeles County, California.

5. Martin Pray, 962 Ackerman Avenue, Syracuse 10, New York State.

6. May E. Hagedorn, 4211 Olive Drive, Everett, Washington.

7. Norman Reyes, 1611 Eastland Avenue, Nashville, Tenn.

8. Mrs. Norman Reyes, 1611 Eastland Avenue, Nashville, Tenn.

9. John E. Tunnicliffe, Route 4, Box 233, Grants Pass, Oregon.

10. Mark L. Streeter, 1008 Cassia Street, Idaho Falls, Idaho.

11. John David Provo, Address is believed to be at a U. S. military camp in Texas or Maryland.

12. Major Wallace E. Ince, Presidio, San Francisco, California.

This motion is made upon the ground that each of the named witnesses is a necessary and material witness for the defendant on the trial of said action and a witness whose testimony is necessary and material to the defendant in her defense to said action.

The facts to which each of the said witnesses is expected to testify and the materiality of that testimony is set forth in the affidavit of the defendant filed in support of this motion which is incorporated herein by reference for said purpose.

The defendant cannot safely proceed to trial of said action without the production of the person of each of said witnesses in court at the trial herein to testify in person so that the individual testimony, attitude and demeanor of each can be observed, considered and weighed by the Court and the jury.

This motion is also made upon the ground that the defendant is an indigent person and does not have sufficient means and is actually unable to pay the fees for the issuance and service of said subpoenas for said witnesses and is actually unable to pay the costs of transportation of said witnesses to attend the said trial of the action. Each of said witnesses is ready, willing and able to attend the trial and testify on behalf of the defendant in the event he or she is served with a subpoena and is paid the necessary witness fees and transportation expenses.

The failure or refusal of the Court to order or authorize the issuance and service of said subpoenas

and the production of said witnesses at the trial herein at the expense of the Government will result in a failure of justice and deprive the defendant of her substantial constitutional and statutory rights to a fair and impartial trial by jury and to obtain witnesses in her favor, in violation of the provisions of the Sixth Amendment and the due process of law guaranty of the Fifth Amendment of the Constitution.

This motion will be made and based upon the notice of this motion, said motion, affidavit in support thereof, and upon all the records, pleadings, files, court orders and documents herein, and upon the similar motion heretofore made herein for like service of subpoenas and for the taking of depositions filed herein on March 1, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Points and Authorities

Rules 17 and 26, Rules of Criminal Procedure.

Fifth Amendment, U. S. Constitution.

Sixth Amendment, U. S. Constitution.

Title 18 USCA, Sec. 3005.

Respectfully submitted,
/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Affidavit In Support Of Motion

Northern District of California,
State of California,
City and County of San Francisco—ss.

Iva Ikuko Toguri d'Aquino being first duly sworn, deposes and says: that she is the defendant in the above-entitled action and is detained under process of this Court, without bail, in San Francisco County Jail No. 3, Dunbar and Washington Streets, San Francisco, California; that she is an adult person over the age of twenty-one (21) years; that ever since on or about July 25, 1941, she has continuously resided in Tokyo, Japan, where, on April 19, 1945, she was lawfully united in marriage to one, Felipe J. d'Aquino, who then and ever since his birth has been and still is a national and citizen of Portugal residing in Tokyo, Japan; that she thereby and thereon, pursuant to the law of Portugal, as also the law of Japan, as also by the law of all other civilized nations and by international law, became and ever since then continuously has been and now is a national and citizen of Portugal and in 1945 was formally naturalized as a Portuguese national by said marriage and by formal registration of said marriage as such a citizen of Portugal at the office of the Consul of Portugal at Tokyo, Japan; that ever since her said marriage she has resided at No. 396 Ikejiri Machi, Setagaya-Ku, Tokyo, Japan, with her said husband.

On August 26, 1948, defendant was arrested by agents of the United States, acting under orders of the Attorney General of the United States, and thereupon imprisoned in the Sugamo Prison, Tokyo, Japan, and thereafter was forcibly taken aboard the S. S. General F. R. Hodges, a U. S. transport vessel on which she was brought to San Francisco, California, on September 25, 1948, and while said vessel was in progress of docking at said port she was seized by agents of the U. S. Federal Bureau of Investigation upon a purported complaint filed in this Court on September 25, 1948, was brought before the U. S. Commissioner in this District and thereafter was indicted in this cause which is now pending in this court.

The defendant is an indigent; aside from used clothing and a few personal effects, the reasonable value of which does not exceed Twenty Five (\$25.00) Dollars, she possesses the following assets only, viz., the equivalent of the sum of approximately One Hundred (\$100.00) Dollars on deposit in the Postal Savings Bank in Tokyo, jointly with her husband in Tokyo, Japan, household furniture, dishes, trunk, sewing machine and utensils of the reasonable value of One Hundred (\$100.00) Dollars, and a remote claim or right, subservient to the right of the Attorney General as the Alien Property Custodian, in and to certain real property situated in Los Angeles County, California, described as follows, to-wit:

Lots 42 and 57 of the South Gate Tract in the Rancho Tajauta, as per map recorded in Book 13,

Pages 14 and 15 of Maps in the office of the County Recorder of said County, and portion of the 538.28 acre track of land allotted to Jose Maria Abila in the partition of Rancho Tajauta, Case number 1200 of the 17th Judicial District Court in the County of Los Angeles.

Which said property she is informed and believes has an approximate market value of Three Thousand Five Hundred (\$3,500.00) Dollars, the interest of the defendant therein, however, being at most a disputable claim and hence of substantially no value whatever to her.

By reason of her said poverty and indigency the defendant does not have sufficient means and is actually unable to bear the expense of producing her witnesses, hereinafter named, or any of them, to testify in person in her defense at the trial herein, or to bear the expense of their travel, subsistence and witness fees for attending the trial herein or to have issued and served upon them subpoenas requiring them to appear and testify at the trial herein.

That each of the witnesses, hereinafter named, is a necessary and material witness for the defendant on the trial of said action and the testimony of each is necessary and material to the defendant in her defense of said indictment.

That the defendant cannot safely proceed to a trial of said action without the testimony of said witnesses.

The witnesses whose testimony is necessary and material to be given in person at the trial herein, their places of residence, their nationalities and citizenships which are unknown to defendant but which she believes to be as hereinafter set forth, and the material and necessary testimony they are expected to give, in substance and effect, are as follows:

1. George H. Henshaw, 2025 Benedict Canyon Drive, Beverly Hills, California, a U. S. citizen, to testify that he was an ensign in the U. S. Navy who from 1942 to Aug. 15, 1945, was held as a prisoner of war by the Japanese at Tokyo, Japan; that he saw the defendant in June or July of 1944 in Tokyo and during said time was acquainted with, saw and conversed with various Allied officers and personnel held prisoners of war by the Japanese and who, under duress, were compelled to work at Radio Tokyo, Japan; that although all of said prisoners of war were held under coercion and duress they, nevertheless, did not serve the purposes of their oppressors but did their best to aid and comfort the U. S. and Allied cause; that the defendant did not compose any radio script; and that the Zero Hour program of Radio Tokyo in nowise served the purposes of the Japanese but was designed and conducted by the U. S. and Allied prisoners to aid the U. S. and Allied cause.

2. Chiyeko Ito, 3118 Blanchard Street, Los Angeles 33, California, a U. S. citizen, to testify that

she sailed to Japan in 1941 on the same boat as the defendant; that she thereafter was employed by the Domei News Agency in Tokyo; that she corresponded with the defendant in Japan between Dec. 7, 1941, and Aug. 15, 1945, and frequently saw and conversed with her between Nov. 1, 1943, and Aug. 15, 1945; that during said time the defendant expressed her loyalty to the U. S. and Allied cause and her confidence that the U. S. and its Allies were in the right and would win the war; that the defendant was kept under constant surveillance by the Japanese police authorities.

3. Amy Masuda, Los Angeles, California, a U. S. citizen, to testify that between Nov. 1, 1943, and Aug. 15, 1945, she was employed as a typist at Radio Tokyo, in Tokyo, Japan; that she was acquainted with the defendant during said period and saw her frequently and observed her at work; that the defendant never wrote or composed any radio script; that the defendant was compelled by Mr. Takano of Radio Tokyo to have a voice test made; that Kempeitai agents were at Radio Tokyo and that defendant and all the U. S. and Allied prisoners of war there forced to labor were held in duress by the Japanese and were in fear of their lives.

4. James F. Whitten, Torrance, Los Angeles County, California, a U. S. citizen, to testify that from about Nov. 1, 1943, to Aug. 15, 1945, he was

a U. S. naval officer and stationed at various U. S. naval stations and on various U. S. naval vessels in Southwestern Pacific Ocean areas; that from about Nov. 1, 1943, to Aug. 15, 1945, he daily listened to and monitored the radio broadcasts from Radio Tokyo, Tokyo, including the broadcasts of the Zero Hour program emanating therefrom; that no female voice on the Zero Hour program broadcast any propaganda for the Japanese or any matter or thing against the U. S. or its Allies; that the female voices thereon broadcast introductions to musical records played on said program and that this was limited to statements of the types of musical recordings, the composers thereof, the orchestras or soloists thereon and that the said introductions and musical recordings were of a lively nature that bolstered up the morale of U. S. and Allied listeners within listening range.

5. Martin Pray, 962 Ackerman Avenue, Syracuse 10, New York State, a U. S. citizen, to testify that he was a Sergeant in the U. S. Army stationed at Sugamo Prison, Tokyo, from about Nov. 16, 1945, to about Oct. 6, 1946; that he saw the defendant there almost daily during said period of time; that the defendant there was treated by the U. S. military and civil authorities as not being a U. S. citizen but as being a foreign national and was denied the privileges accorded citizen prisoners.

6. May E. Hagedorn, 4211 Olive Drive, Everett, Washington, a U. S. citizen, to testify that from

June 26, 1943, to Aug. 14, 1945, she was engaged as a civilian radio interceptor of shortwave radio broadcasts from Radio, Tokyo, Japan, and monitored the war prisoner's programs thereon, including the Zero Hour program thereon; that no female announcer broadcasting therefrom at any time during said period broadcast any propaganda for the Japanese or any news broadcast or commentaries or did any ad libbing thereon; that the prisoner of war messages broadcast thereon were restricted to announcements of the names of U. S. and Allied prisoners of war captured and held by the Japanese, their whereabouts and conditions; that the musical recordings announced by each of the female voices thereon were lively American and European classical, semi-classical and popular types; that no unlawful announcements against the U. S. or its Allies and no announcements in favor of the Japanese were made by any of the female voices thereon.

7. Norman Reyes, 1611 Eastland Avenue, Nashville, Tenn., a Philippine national lawfully admitted to and residing in the United States, to testify that he was a Lieutenant in the U. S. Army from sometime in 1942 to Aug. 15, 1945; that he was captured by the Japanese and held as a prisoner of war by them from sometime in 1942 to Aug. 15, 1945; that he and many other U. S. and Allied military, naval and marine officers and civilian personnel were held under coercion and duress by the Japanese after being taken prisoner by the Japanese; that he was held by the Japanese in Tokyo; that from about

Nov. 1, 1943, to Aug. 15, 1945, while he so was held under duress he almost daily saw and talked to the defendant and observed her in the performance of her employment; that the defendant during all of said period was loyal and devoted to the U. S. and Allied cause and that he and other prisoners of war held by the Japanese observed and knew of her said loyalty; that the defendant never wrote or composed any radio script of any nature whatever; that the defendant never announced or broadcast any propaganda for the Japanese; that she never announced or broadcast any news or news items for the Japanese; that she never committed any unlawful act against the U. S. or its Allies; that she never served any purpose of the Japanese; that she aided and comforted the U. S. and its Allies and U. S. and Allied prisoners of war held by the Japanese by secretly conveying to them news of U. S. and Allied military and naval successes against Japan for the purpose of bolstering up their morale and that her aid and comfort did bolster up their morale; that she secretly conveyed to said prisoners of war tobacco, food, medicine and other needed supplies for the purpose of aiding the U. S. and its Allies.

8. Mrs. Norman Reyes, 1611 Eastland Avenue, Nashville, Tenn., the wife of Norman Reyes above mentioned, and a Philippine national residing in the U. S., to testify that between Nov. 1, 1943, and Aug. 15, 1945, she was frequently present at the office of Radio Tokyo in Tokyo, Japan; that she then was acquainted with the defendant and saw her fre-

quently; that the defendant never wrote any radio script and that she never broadcast or announced via radio any propaganda or news for the Japanese; that all the U. S. and Allied prisoners of war who there, under coercion, intimidation and duress and in fear of their lives, were forced to labor by the Japanese did their utmost to defeat the purpose of their Japanese oppressors and were successful in achieving that result; that the Zero Hour program was restricted to reading of prisoner of war messages to U. S. and Allied troops to give their whereabouts and to bolster up the morale of the U. S. and Allied listeners and to the playing of familiar lively classical, semi-classical and popular American and European music for the pleasure of U. S. and Allied troops.

9. John E. Tunnicliffe, Route 4, Box 233, Grants Pass, Oregon, a U. S. citizen, to testify that he was held as a U. S. civilian prisoner of war by the Japanese from 1942 to Aug. 15, 1945; that from about Nov. 1, 1943, to Aug. 15, 1945, he was held as such a prisoner in Tokyo, Japan; that he, along with a number of other U. S. and Allied prisoners of war were compelled, under threats against their lives, to work at forced occupations by their Japanese captors; that agents of the Japanese secret police, the thought-control police termed the Kempeitai were maintained at Radio Tokyo to hold the said prisoners of war under constant coercion; that they and civilian aliens there forced to labor were held under duress, that the Zero Hour program in nowise aided

the Japanese but, on the contrary, was designed by the prisoners of war in charge thereof to aid the U. S. and Allied cause by bolstering up U. S. and Allied morale by broadcasting prisoner of war messages to Allied troops and lively music to give pleasure to Allied troops.

10. Mark L. Streeter, 1008 Cassia Street, Idaho Falls, Idaho, a U. S. citizen, to testify that from sometime in 1942 to about August 15, 1945, he was held as an American prisoner of war by the Japanese under duress in Tokyo, Japan; that he became acquainted with the defendant about Nov., 1943; that he saw her almost daily from said time to Aug. 15, 1945, at Radio Tokyo, and thereafter, over a period of approximately five months' time; that during said periods of time he conversed with the defendant; that he knows of his own knowledge and observation that the defendant during all of said times was loyal and devoted to the U. S. and its Allies and the U. S. and Allied cause; that the defendant during said periods of time deliberately concealed from the Japanese authorities information concerning the activities of U. S. and Allied prisoners of war which said activities were taken by said prisoners against the Japanese authorities and government; that the defendant continuously aided and comforted U. S. and Allied prisoners of war by secretly conveying to them news of U. S. and Allied military and naval successes for the purpose of bolstering up their morale; that, at

great personal risk, she secretly delivered to said prisoners of war tobacco, food, medicine and blankets; that he knows of his own knowledge that the defendant never composed or wrote any radio script whatever for the Japanese or their government; that the defendant never at any time whatever said, uttered or broadcast any propaganda or news items whatever, by radio or otherwise, for the Japanese; that the defendant never committed any overt or hostile act against the U. S. or any of its Allies but that, on the contrary, she aided and comforted the U. S. and its Allies; that during said times the defendant and many U. S. and Allied prisoners of war were held by the Japanese under duress and intimidation and were in fear for their own personal security.

11. John David Provo, whose address is believed to be at a U. S. Military Camp in Texas or Maryland, a U. S. citizen, to testify that he was held as a U. S. prisoner of war by the Japanese from 1942 to about Aug. 15, 1945, in Tokyo; that during said period of time he was intimidated, coerced and kept under constant duress by the Japanese; that during said period of time he frequently saw the defendant in Tokyo at her place of employment and observed her at her employment and knows the nature thereof and that the defendant neither wrote any radio script nor committed any overt or any other unlawful acts against the U. S. or its Allies; that from his own knowledge

and observation the defendant at all of said times was loyal and devoted to the U. S. and Allied cause and that she actively aided and comforted U. S. and Allied military, naval and marine officers and civilian personnel held prisoners of war by the Japanese by secretly conveying to them news of U. S. and Allied military and naval successes to bolster up their spirits and morale and by delivering to them tobacco, food and blankets of which they were in dire need.

12. Major Wallace E. Ince, also known as Ted Wallace Ince, Presidio, San Francisco, California, a U. S. citizen, to testify that from sometime in 1942 to Aug. 15, 1945, he was a U. S. prisoner of war held by the Japanese under coercion and duress; that from about Nov. 1, 1943, to sometime in the spring of 1945, while he was so held by the Japanese in Tokyo, Japan, he saw and talked to the defendant almost daily; that from conversations with her and from observing her he was aware that she was loyal and devoted to the U. S. and its Allies and to the cause of the U. S. and its Allies; that during said time he observed her at work and knows of his own knowledge that she never wrote or composed any radio script of any nature whatever and that she did not make any radio announcements or broadcasts of any news, news commentaries or propaganda for the Japanese government, nation or any of its agencies, citizens or subjects, or of any matter or thing favorable to any of them; that she did not announce or broadcast any statement

or thing against the U. S. or its Allies; that she aided and comforted U. S. and Allied prisoners of war during said period by secretly conveying to them news of Allied military, air force and naval successes for the purpose of aiding and bolstering up their morale which purpose it had in fact and that she secretly, at great personal risk to herself, delivered to U. S. and Allied prisoners of war, held under duress by the Japanese, tobacco, food and supplies in which they were of dire need for the purpose of aiding and comforting said prisoners of war and that such things did bolster up their morale and did aid and comfort them to defeat the purposes of the Japanese authorities.

Affiant alleges upon information and belief that each of the foregoing named witnesses is ready, willing and able to come to San Francisco to testify in behalf of the defendant provided his or her travel and subsistence expenses and witness fees will be defrayed.

Affiant alleges that the failure or refusal of the Court to authorize the production of the said witnesses to testify in person for the defendant at the trial herein or the failure of the Government to authorize subpoenas to be issued and served upon them and said witnesses to be produced at the trial herein for said purposes at the expense of the Government will result in a failure of justice and deprive her of a fair and impartial jury trial and of her right to obtain witnesses in her favor and of the due process of law guaranteed her by the pro-

visions of the Sixth and Fifth Amendments of the U. S. Constitution.

/s/ IVA IKUKO TOGURI
D'AQUINO,
Affiant.

Subscribed and sworn to before me this 5th day of April, 1949.

[Seal] /s/ C. W. CALBREATH,
Clerk, U. S. District Court, Northern District of
California.

Receipt of copy acknowledged.

[Endorsed]: Filed April 5, 1949.

[Title of District Court and Cause.]

NOTICE

To Frank J. Hennessy, United States Attorney, and
to Tom DeWolfe, Special Assistant to the At-
torney General, Attorneys for the Plaintiff:

You and each of you will please take notice that on Monday, the 25th day of April, 1949, at the Courtroom of the above-entitled Court, 3rd Floor, Post Office Building, 7th and Mission Streets, San Francisco, California, at the hour of 10 o'clock a.m. of said day, or so soon thereafter as counsel can be heard, the defendant will bring on for hearing the within motion.

Dated: April 21, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

MOTION FOR POSTPONEMENT OF
TIME OF TRIAL

The defendant hereby moves the Court for its order postponing the trial of the cause from May 16, 1949, to July 5, 1949, upon the ground and for the reason that she has been informed by Theodore Tamba, Esq., attorney associated with counsel for defendant, who is presently engaged in taking the depositions of defendant's witnesses in Japan and Hong Kong, that it will be impossible to complete the taking of said depositions on or by May 16, 1949, due to the fact that the witnesses there to be interviewed exceed forty in number, the residences and places of occupation of such witnesses in Japan are scattered not only in the Tokyo area but in cities other than Tokyo, that the means of transportation to locate, interview and arrange for the taking of said depositions are inadequate which has occasioned and occasions unexpected delay therein; that the problems of locating, interviewing, and arranging for the taking of said depositions, including arranging for interpreting from the Japanese to the English language in connection therewith, are more time consuming than originally estimated; that the taking of said depositions can be completed and the depositions returned to this Court on or by July 5, 1949; that the defendant cannot safely proceed to trial without the production of the testimony of her witnesses who are in Japan and Hong

Kong and that she acquiesces in a postponement of the trial of the cause for said purposes.

This motion will be made upon the pleadings, records and files herein and upon the notice of this motion and upon letters of Theodore Tamba, Esq., from Japan, to be offered in support of said motion if the Court or counsel for plaintiff require them to be offered in support thereof.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 21, 1949.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 25th day of April, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order authorizing issuance and service of subpoenas and motion for list of witnesses and veniremen to be continued to May 2, 1949, and ordering case continued from May 16, 1949, to July 5, 1949, for trial.)

This case came on this day for hearing as to the

following motions: motion to authorize issuance and service of subpoenas, motion for list of witnesses and veniremen, and motion to postpone date of trial.

The defendant was present in custody of the U. S. Marshal and with her attorney, Wayne Collins, Esq., Hon. Frank J. Hennessy, U. S. Atty., for U. S. On motion of Mr. Collins and with consent of Mr. Hennessy, it is Ordered that the motion to authorize the issuance and service of subpoenas and the motion for a list of witnesses and veniremen be continued to May 2, 1949. Further ordered, on motion of Mr. Collins, that this case be continued from May 16, 1949, to July 5, 1949, for trial.

[Title of District Court and Cause.]

NOTICE

To Frank J. Hennessy, United States Attorney,
and to Tom DeWolfe, Special Assistant to the
Attorney General, Attorneys for the Plaintiff:

You and each of you will please take notice that on Monday, the 9th day of May, 1949, at the Court Room of the above-entitled Court, 3rd Floor, Post Office Building, 7th and Mission Streets, San Francisco, California, at the hour of 10 o'clock a.m. of said day, or as soon thereafter as counsel can be heard, the defendant will bring on for hearing the within motion.

Dated: May 4, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

MOTION FOR ORDER AUTHORIZING AND
DIRECTING ISSUANCE AND SERVICE
OF SUBPOENAS REQUIRING ATTEND-
ANCE OF WITNESSES AT THE TRIAL
HEREIN AT THE EXPENSE OF THE
GOVERNMENT

The defendant, Iva Ikuko Toguri d'Aquino, moves the Court for its order authorizing and directing the issuance and service of subpoenas requiring the attendance of the hereinafter named witnesses, residing at the places hereinafter set forth, at the trial herein at the expense of the plaintiff, the U. S. Government.

The names, addresses and places of residence of the said witnesses are as follows:

1. Willesden Cox, 2627 Kingsten Pike, Knoxville, Tenn.
2. Frank Fujita, Fort Sill, Oklahoma.
3. Shigemi Mazawa, 4842 Winthrop St., Chicago, Illinois.
4. Jack Wisener, 4213 Red River Street, Austin, Texas.
5. Yoneko Matsunaga, New Jersey.
6. Milton Glazier, Dover, Idaho.

This motion is made upon the ground that each of the named witnesses is a necessary and material witness for the defendant on the trial of said action

and a witness whose testimony is necessary and material to the defendant in her defense to said action.

The facts to which each of the said witnesses is expected to testify and the materiality of that testimony is set forth in the affidavit of the defendant filed in support of this motion which is incorporated herein by reference for said purpose.

The defendant cannot safely proceed to trial of said action without the production of the person of each of said witnesses in court at the trial herein to testify in person so that the individual testimony, attitude and demeanor of each can be observed, considered and weighed by the Court and the jury.

This motion is also made upon the ground that the defendant is an indigent person and does not have sufficient means and is actually unable to pay the fees for the issuance and service of said subpoenas for said witnesses and is actually unable to pay the costs of transportation of said witnesses to attend the said trial of the action. Each of said witnesses is ready, willing and able to attend the trial and testify on behalf of the defendant in the event he or she is served with a subpoena and is paid the necessary witness fees and transportation expenses.

The failure or refusal of the Court to order or authorize the issuance and service of said subpoenas and the production of said witnesses at the trial herein at the expense of the Government will result in a failure of justice and deprive the defendant of her substantial constitutional and statutory rights

to a fair and impartial trial by jury and to obtain witnesses in her favor, in violation of the provisions of the Sixth Amendment and the due process of law guaranty of the Fifth Amendment of the Constitution.

This motion will be made and based upon the notice of this motion, said motion, affidavit in support thereof, and upon all the records, pleadings, files, court orders and documents herein, and upon the similar motions heretofore made herein for like service of subpoenas and for the taking of depositions filed herein on March 1, 1949, and April 5, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Points and Authorities

Rules 17 and 26, Rules of Criminal Procedure.

Fifth Amendment, U. S. Constitution.

Sixth Amendment, U. S. Constitution.

Title 18 USCA, Sec. 3005.

Respectfully submitted,

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Affidavit in Support of Motion

Northern District of California,
State of California,

City and County of San Francisco—ss.

Iva Ikuko Toguri d'Aquino being first duly sworn, deposes and says: that she is the defendant in the above-entitled action and is detained under process of this Court, without bail, in San Francisco County Jail No. 3, Dunbar and Washington Streets, San Francisco, California; that she is an adult person over the age of twenty-one (21) years; that ever since on or about July 25, 1941, she has continuously resided in Tokyo, Japan, where, on April 19, 1945, she was lawfully united in marriage to one, Felipe J. d'Aquino, who then and ever since his birth has been and still is a national and citizen of Portugal residing in Tokyo, Japan; that she thereby and thereon, pursuant to the law of Portugal, as also the law of Japan, as also by the law of all other civilized nations and by international law, became and ever since then continuously has been and now is a national and citizen of Portugal and in 1945 was formally naturalized as a Portuguese national by said marriage and by formal registration of said marriage as such a citizen of Portugal at the office of the Consul of Portugal at Tokyo, Japan; that ever since her said marriage she has resided at No. 396 Ikejiri Machi, Setagaya-Ku, Tokyo, Japan, with her said husband.

On August 26, 1948, defendant was arrested by agents of the United States, acting under orders of the Attorney General of the United States, and thereupon imprisoned in the Sugamo Prison, Tokyo, Japan, and thereafter was forcibly taken aboard the S. S. General F. R. Hodges, a U. S. transport vessel on which she was brought to San Francisco, California, on September 25, 1948, and while said vessel was in progress of docking at said port she was seized by agents of the U. S. Federal Bureau of Investigation upon a purported complaint filed in this Court on September 25, 1948, was brought before the U. S. Commissioner in this District and thereafter was indicted in this cause which is now pending in this court.

The defendant is an indigent; aside from used clothing and a few personal effects, the reasonable value of which does not exceed Twenty Five (\$25.00) Dollars, she possesses the following assets only, viz., the equivalent of the sum of approximately One Hundred (\$100.00) Dollars on deposit in the Postal Savings Bank in Tokyo, jointly with her husband in Tokyo, Japan, household furniture, dishes, trunk, sewing machine and utensils of the reasonable value of One Hundred (\$100.00) Dollars, and a remote claim or right, subservient to the right of the Attorney General as the Alien Property Custodian, in and to certain real property situated in Los Angeles County, California, described as follows, to-wit:

Lots 42 and 57 of the South Gate Tract in the Rancho Tajauta, as per map recorded in Book 13, Pages 14 and 15 of Maps in the office of the County Recorder of said County, and portion of the 538.28 acre track of land allotted to Jose Maria Abila in the partition of Rancho Tajauta, Case number 1200 of the 17th Judicial District Court in the County of Los Angeles.

which said property she is informed and believes has an approximate market value of Three Thousand Five Hundred (\$3,500.00) Dollars, the interest of the defendant therein, however, being at most a disputable claim and hence of substantially no value whatever to her.

By reason of her said poverty and indigency the defendant does not have sufficient means and is actually unable to bear the expense of producing her witnesses, hereinafter named, or any of them, to testify in person in her defense at the trial herein, or to bear the expense of their travel, subsistence and witness fees for attending the trial herein or to have issued and served upon them subpoenas requiring them to appear and testify at the trial herein.

That each of the witnesses, hereinafter named, is a necessary and material witness for the defendant on the trial of said action and the testimony of each is necessary and material to the defendant in her defense of said indictment.

That the defendant cannot safely proceed to a trial of said action without the testimony of said witnesses.

The witnesses whose testimony is necessary and material to be given in person at the trial herein, their places of residence, their nationalities and citizenships which are unknown to defendant but which she believes to be as hereinafter set forth, and the material and necessary testimony they are expected to give, in substance and effect, are as follows:

1. Willesden Cox, 2627 Kingsten Pike, Knoxville, Tenn., a U. S. citizen, to testify that from about January, 1944, to about Aug. 15, 1945, he was a Major in the U. S. Army held as a prisoner of war by the Japanese at Bunka Prison Camp, Tokyo, Japan, along with a number of other captured U. S. and Allied officers, men and civilian personnel, each and all of whom were mistreated, intimidated, and held under duress by various Japanese army authorities and were threatened with loss of life if they failed to obey the orders of their captors; that a number of said prisoners of war were beaten by their captors for failure to obey the orders and commands of their captors; that all of said prisoners of war were kept in a constant state of fear by their Japanese captors and that each of those who were forced to broadcast from Radio Tokyo during said period of time and those who wrote script therefor did so under compulsion of the Japanese and were not free agents but acted solely under duress and coercion; that the defendant did not write any script or broadcast any news or propaganda for the Japanese but did aid and comfort the

prisoners of war by secretly delivering to them tobacco, food and medicine at great personal risk to herself; that Kempeitai agents kept said prisoners of war and said defendant under constant surveillance and in fear.

2. Frank Fujita, Fort Sill, Oklahoma, a U. S. citizen, to testify that from about September, 1944, to about Aug. 15, 1945, he was a U. S. soldier held prisoner by the Japanese at Bunka Prison Camp, Tokyo, Japan, along with a number of other U. S. and Allied officers, men and civilian personnel, each and all of whom were mistreated, undernourished and starved, and threatened with loss of life for failure to obey the commands of their captors; that a number of the said prisoners of war were beaten by the Japanese and all were held under continuous duress; that Kempeitai agents kept them and the defendant under continuous surveillance during said period; that the defendant never wrote any script and never broadcast or announced any news or propaganda for the Japanese; that there were a number of females announcing and broadcasting at Radio Tokyo during said period of time and that a number of the alien women broadcasters announced propaganda for the Japanese and to testify to names of each of such female broadcasters and the nature and types of their respective broadcasts; that the defendant never committed any unlawful act and never made any unlawful statement against the U. S. and its Allies and never in anywise aided the Japanese; that the defendant, at great personal

risk to her own security, secretly conveyed food, medicine and supplies to U. S. and Allied prisoners of war at Bunka Prison Camp to aid and comfort them and to assist them in defeating the purposes of the Japanese and secretly conveyed to said prisoners of war news of Allied successes for the purpose of bolstering up their morale.

3. Shigemi Mazawa, 4842 Winthrop St., Chicago, Illinois, a U. S. citizen, to testify that from sometime in early 1944 to about Aug. 15, 1945, he was forced to work at Radio Tokyo, Tokyo, Japan; that he has been acquainted with the defendant since early 1944 and saw her frequently at Radio Tokyo during said period of time; that he knows the nature of her employment there; that during said period the defendant orally expressed her confidence and faith in the U. S. and Allied cause and her sympathy for the prisoners of war held at Bunka Prison Camp who were coerced into working at Radio Tokyo; that the defendant never wrote any radio script during said period and never broadcast any unlawful statement or committed any unlawful act detrimental to the U. S. and its Allies; that the defendant was not a free agent while at Radio Tokyo and that none of the prisoners of war there forced to work by the Japanese were free agents but all were held under duress and were kept under continuous surveillance and in fear by the Japanese secret military police; and to testify to the period of time the defendant was employed, the number

of days per week of that employment and the hours thereof and the vacation periods she was given and the number and times of her absences therefrom.

4. Jack Wisener, 4213 Red River Street, Austin, Texas, a U. S. citizen, to testify that from the latter part of 1943 to about Aug. 15, 1945, he was a lieutenant in the U. S. Army held under duress as a prisoner of war by the Japanese at Bunka Prison Camp, Tokyo, Japan, along with a number of other U. S. and Allied prisoners of war likewise held by the Japanese under duress; that a number of the prisoners of war there held were slapped and beaten by the Japanese for failure to comply with their demands and to obey their orders; that they were compelled to comply with the orders of their captors to save their lives and that all of them suffered for lack of food and most of them were rendered ill by their mistreatment; that Kempeitai agents kept them and the defendant under continuous surveillance and in fear of their lives; that the defendant aided and comforted the U. S. and Allied prisoners of war at Bunka Prison Camp by secretly conveying to them news of U. S. and Allied military and naval successes to bolster up their spirits and by conveying secretly to them tobacco, food and medicine for like purposes; that the defendant neither wrote radio script nor broadcast any unlawful statement against the U. S. and its Allies.

5. Yoneko Matsunaga, New Jersey, a U. S. citizen, to testify that she has been acquainted with the

defendant since sometime during 1942; that she attended a school in Japan when defendant was in attendance at school; that she was employed at Radio Tokyo between November 1, 1943, and Aug. 15, 1945; and that she is familiar with the dates, hours, days and period of time the defendant was employed in Japan, the nature and duties of said employment; that during said period of time the defendant expressed her confidence and faith in the U. S. and Allied cause to her; that she frequently saw defendant at her employment and knows of her own knowledge that the defendant never wrote any Radio script and never broadcast any news or propaganda for the Japanese; that there were a number of female broadcasters employed at Radio Tokyo on the Zero Hour program and on other radio programs there broadcast, the names of said females and the nature and content of their respective broadcasts; and to testify to the nature of the defendant's employment, the period of time she was employed, the hours she worked and the days she was absent therefrom.

6. Milton Glazier, Dover, Idaho, a U. S. citizen, to testify he was a soldier in the U. S. Army held as a prisoner of war by the Japanese at Bunka Prison Camp, Tokyo, Japan, from about May, 1945, to about Aug. 23, 1945; that he and all other U. S. and Allied prisoners of war then and there held by the Japanese long had been held and all during said period were held under duress by the Japanese and were intimidated, starved and coerced into obeying

commands of their oppressors; that a number of said prisoners were coerced into working at Radio Tokyo by the Japanese and that the said prisoners endeavored to defeat and did succeed in defeating the purpose of their Japanese oppressors; that the defendant did not write any radio script and was not employed so to do and to his knowledge never broadcast anything detrimental to the U. S. and Allied cause; that there were a number of females who were announcers at Radio Tokyo and to distinguish them from the defendant and their duties from the defendant's; that he never heard the name Tokyo Rose applied to the defendant in Japan; that Kempeitai and police agents kept the defendant and the prisoners of war under constant surveillance and continuous fear.

Affiant alleges upon information and belief that each of the foregoing named witnesses is ready, willing and able to come to San Francisco to testify in behalf of the defendant provided his or her travel and subsistence expenses and witness fees will be defrayed.

Affiant alleges that the failure or refusal of the Court to authorize the production of the said witnesses to testify in person for the defendant at the trial herein or the failure of the Government to authorize subpoenas to be issued and served upon them and said witnesses to be produced at the trial herein for said purposes at the expense of the Government will result in a failure of justice and deprive her of a fair and impartial jury trial and of

her right to obtain witnesses in her favor and of the due process of law guaranteed her by the provisions of the Sixth and Fifth Amendments of the U. S. Constitution.

/s/ IVA IKUKO TOGURI
D'AQUINO,
Affiant.

Subscribed and sworn to before me this 4th day of May, 1949.

[Seal] /s/ C. M. TAYLOR,
Deputy Clerk, U. S. District Court, Northern District of California.

Receipt of copy acknowledged.

[Endorsed]: Filed May 4, 1949.

[Title of District Court and Cause.]

ORDER GRANTING DEFENDANT'S MOTIONS
FOR ORDER AUTHORIZING AND DIRECTING
ISSUANCE AND SERVICE OF
SUBPOENAS OF DEFENDANT'S WIT-
NESSES AT TRIAL HEREIN AT THE EX-
PENSE OF THE GOVERNMENT

The motions of the defendant for order authorizing and directing the issuance and service of subpoenas requiring the attendance of defendant's witness at the trial herein at the expense of the Government, filed herein on April 5, 1949, and May

3, 1949, having come on to be heard on May 9, 1949, Wayne M. Collins, Esq., appearing for the defendant and Frank J. Hennessy, U. S. Attorney, appearing for the plaintiff, and counsel for the plaintiff having informed the Court that the plaintiff will subpoena and produce at the trial the following persons as witnesses for the plaintiff, namely, Amy Masuda (Emi Matsuda or Masuda), Norman Reyes and Wallace E. Ince, and counsel for the defendant having orally informed the Court that Martin Pray is expected to be in the vicinity of San Francisco in the latter part of June, 1949, and the motions having been duly argued and thereupon submitted to the Court for decision and the motion being duly considered by the Court,

The Court finds that each of the herein named witnesses is a necessary and material witness for the defendant at the trial of said action and is a witness whose testimony is necessary and material to the defendant in her defense to said action; that the defendant cannot safely proceed to a trial of said action without the production of the person of each said witness in court at the trial herein to testify in person so that the individual testimony, attitude and demeanor of each can be observed, considered and weighed by the Court and the jury at the trial herein; and that the defendant is indigent and does not have sufficient means and is actually unable to pay the fees for the issuance and service of subpoenas and the production of said witnesses at the trial herein and is actually unable to pay the

expenses of transportation of said witnesses to attend the said trial; and that a denial of said motions would violate the provisions of Rule 17 RCP and deprive the defendant of her substantial constitutional rights to an impartial trial by jury and to obtain witnesses in her favor, contrary to the provisions of the Fifth and Sixth Amendments,

Now, Therefore, It Is Ordered that the defendant's said motions be granted and that subpoenas be issued for the defendant's witnesses, hereinafter named, at their respective places of residence and be served upon them and that the cost thereof and their respective witness fees and travel expenses to attend the trial of the cause herein be paid by the United States Government, to-wit:—

1. George H. Henshaw, 2025 Benedict Canyon Drive, Beverly Hills, California
2. Chiyeko Ito, 3118 Blanchard Street, Los Angeles 33, California
3. James F. Whitten, Torrance, Los Angeles County, California
4. May E. Hagedorn, 4211 Olive Drive, Everett, Washington
5. Mrs. Norman Reyes (Katherine Reyes), 6412 South Ellis Street, Chicago, Illinois
6. John E. Tunncliffe, Route 4, Box 233, Grants Pass, Oregon
7. Mark L. Streeter, 1008 Cassia Street, Idaho Falls, Idaho

8. John David Provoo, Walter Reed Hospital, Washington, D. C.

9. Willesdon (Williston) Cox, 2627 Kingsten Pike, Knoxville, Tenn.

10. Frank Fujita, Electra, Texas

11. Shigemi Mazawa, 4842 Winthrop Street, Chicago, Illinois

12. Jack Wisener, 4213 Red River Street, Austin, Texas

13. Mrs. Albert Kanzaki, nee Yoneko Matsunaga, 54 West 89th Street, New York, N. Y.

14. Milton Glazier, Dover, Idaho

15. Amy Masuda (Emi Matsuda or Masuda), 212 North Fremont Ave., Los Angeles 12, Calif.

16. Norman Reyes, 1611 Eastland Avenue, Nashville, Tenn.

17. Captain Wallace E. Ince, Presidio, San Francisco, Calif.

Provided, however, that in the event the plaintiff issues and has subpoenas served upon the said Amy Masuda (Emi Matsuda or Masuda), Norman Reyes and Major Wallace E. Ince or produces them at the trial herein as witnesses for the plaintiff there shall be no duplication in payment by the Government of their transportation expenses and witness fees.

And It Is Ordered that the defendant's motion to produce the defendant's witness Martin Pray at

Government expense be denied, without prejudice, however, to a subsequent like motion to be made by defendant for the production of said witness, upon a showing duly to be made.

Dated: May 18, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed May 18, 1949.

[Title of District Court and Cause.]

ORDER

(Denying motion for lists of witnesses and veniremen, and denying motion of defendant for an order of this court to require the plaintiff to supply defendant with a list of the names of the witnesses to be produced on the trial for proving the indictment, together with a statement giving the place of abode of each such witness, and also for its order requiring the plaintiff to supply the defendant at least three days before the trial with a list of the veniremen stating the abode of each venireman.)

The above-entitled matter coming on for hearing this 9th day of May, 1949, before the Court at 10:00 o'clock a.m., Frank J. Hennessy, United States Attorney, appearing for plaintiff, and Wayne M. Collins, appearing for the defendant, and the matter

having been heard by the Court, and submitted to the Court for decision,

It Is Hereby Ordered that the motion of defendant for such order be, at this time, Denied without prejudice to its renewal by the defendant hereafter.

Signed in open Court this 18th day of May, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

Approved As To Form, as provided by Rule 22:

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Endorsed]: Filed May 18, 1949.

[Title of District Court and Cause.]

NOTICE

To Frank J. Hennessy, United States Attorney, and to Tom DeWolfe, Special Assistant to the Attorney General, Attorneys for the Plaintiff:

You and each of you will please take notice that on the 31st day of May, 1949, at the Courtroom of the above-entitled Court, 3rd Floor, Post Office Building, 7th and Mission Streets, San Francisco, California, at the hour of 10 o'clock a.m. of said day, or so soon thereafter as counsel can be heard, the defendant will bring on for hearing the within motion.

Dated: May 24, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

I.

MOTION FOR ORDER AUTHORIZING AND
DIRECTING ISSUANCE AND SERVICE
OF SUBPOENAS REQUIRING ATTEND-
ANCE OF WITNESSES AT THE TRIAL
HEREIN AT THE EXPENSE OF THE
GOVERNMENT

The defendant, Iva Ikuko Toguri d'Aquino, moves the Court for its order authorizing and directing the issuance and service of subpoenas requiring the attendance of the hereinafter named witnesses, residing at the places hereinafter set forth, at the trial herein at the expense of the plaintiff, the U. S. Government.

The names, addresses and places of residence of the said witnesses are as follows:

1. Albert Rickert, Care Pacific American Fisheries, Bellingham, Washington
2. Edwin Kalbfleish, Jr., 1702 Bellevue, Richmond Heights 17, Missouri

This motion is made upon the ground that each of the named witnesses is a necessary and material witness for the defendant on the trial of said action and a witness whose testimony is necessary and material to the defendant in her defense to said action.

The facts to which each of the said witnesses is expected to testify and the materiality of that testi-

mony is set forth in the affidavit of the defendant filed in support of this motion which is incorporated herein by reference for said purpose.

The defendant cannot safely proceed to trial of said action without the production of the person of each of said witnesses in court at the trial herein to testify in person so that the individual testimony, attitude and demeanor of each can be observed, considered and weighed by the Court and the jury.

This motion is also made upon the ground that the defendant is an indigent person and does not have sufficient means and is actually unable to pay the fees for the issuance and service of said subpoenas for said witnesses and is actually unable to pay the costs of transportation of said witnesses to attend the said trial of the action. Each of said witnesses is ready, willing and able to attend the trial and testify on behalf of the defendant in the event he is served with a subpoena and is paid the necessary witness fees and transportation expenses.

The failure or refusal of the Court to order or authorize the issuance and service of said subpoenas and the production of said witnesses at the trial herein at the expense of the Government will result in a failure of justice and deprive the defendant of her substantial constitutional and statutory rights to a fair and impartial trial by jury and to obtain witnesses in her favor, in violation of the provisions of the Sixth Amendment and the due process of law guaranty of the Fifth Amendment of the Constitution.

This motion will be made and based upon the notice of this motion, said motion, affidavit in support thereof, and upon all the records, pleadings, files, court orders and documents herein, and upon the similar motion heretofore made herein for like service of subpoenas and for the taking of depositions filed herein on March 1, 1949 and April 5, 1949.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Points and Authorities

Rules 17 and 26, Rules of Criminal Procedure.

Fifth Amendment, U. S. Constitution.

Sixth Amendment, U. S. Constitution.

Title 18 USCA, Sec. 3005.

Respectfully submitted,
/s/ WAYNE M. COLLINS,
Attorney for Defendant.

[Title of District Court and Cause.]

Affidavit in Support of Motion

Northern District of California,

State of California,

City and County of San Francisco—ss.

Iva Ikuko Toguri d'Aquino being first duly sworn, deposes and says: that she is the defendant in the above-entitled action and is detained under process

of this Court, without bail, in San Francisco County Jail No. 3, Dunbar and Washington Streets, San Francisco, California; that she is an adult person over the age of twenty-one (21) years; that ever since on or about July 25, 1941, she has continuously resided in Tokyo, Japan, where, on April 19, 1945, she was lawfully united in marriage to one, Felipe J. d'Aquino, who then and ever since his birth has been and still is a national and citizen of Portugal residing in Tokyo, Japan; that she thereby and thereon, pursuant to the law of Portugal, as also the law of Japan, as also by the law of all other civilized nations and by international law, became and ever since then continuously has been and now is a national and citizen of Portugal and in 1945 was formally naturalized as a Portuguese national by said marriage and by formal registration of said marriage as such a citizen of Portugal at the office of the Consul of Portugal at Tokyo, Japan; that ever since her said marriage she has resided at No. 396 Ikejiri Machi, Setagaya-Ku, Tokyo, Japan, with her said husband.

On August 26, 1948, defendant was arrested by agents of the United States, acting under orders of the Attorney General of the United States, and thereupon imprisoned in the Sugamo Prison, Tokyo, Japan, and thereafter was forcibly taken aboard the S. S. General F. R. Hodges, a U. S. transport vessel on which she was brought to San Francisco, California, on September 25, 1948, and while said vessel was in progress of docking at said port she was

seized by agents of the U. S. Federal Bureau of Investigation upon a purported complaint filed in this Court on September 25, 1948, was brought before the U. S. Commissioner in this District and thereafter was indicted in this cause which is now pending in this court.

The defendant is an indigent; aside from used clothing and a few personal effects, the reasonable value of which does not exceed Twenty Five (\$25.00) Dollars, she possesses the following assets only, viz., the equivalent of the sum of approximately One Hundred (\$100.00) Dollars on deposit in the Postal Savings Bank in Tokyo, jointly with her husband in Tokyo, Japan, household furniture, dishes, trunk, sewing machine and utensils of the reasonable value of One Hundred (\$100.00) Dollars, and a remote claim or right, subservient to the right of the Attorney General as the Alien Property Custodian, in and to certain real property situated in Los Angeles County, California, described as follows, to-wit:

Lots 42 and 57 of the South Gate Tract in the Rancho Tajauta, as per map recorded in Book 13, Pages 14 and 15 of Maps in the office of the County Recorder of said County, and portion of the 538.28 acre track of land allotted to Jose Maria Abila in the partition of Rancho Tajauta, Case number 1200 of the 17th Judicial District Court in the County of Los Angeles.

which said property she is informed and believes has an approximate market value of Three Thousand

Five Hundred (\$3,500.00) Dollars, the interest of the defendant therein, however, being at most a disputable claim and hence of substantially no value whatever to her.

By reason of her said poverty and indigency the defendant does not have sufficient means and is actually unable to bear the expense of producing her witnesses, hereinafter named, or any of them, to testify in person in her defense at the trial herein, or to bear the expense of their travel, subsistence and witness fees for attending the trial herein or to have issued and served upon them subpoenas requiring them to appear and testify at the trial herein.

That each of the witnesses, hereinafter named, is a necessary and material witness for the defendant on the trial of said action and the testimony of each is necessary and material to the defendant in her defense of said indictment.

That the defendant cannot safely proceed to a trial of said action without the testimony of said witnesses.

The witnesses whose testimony is necessary and material to be given in person at the trial herein, their places of residence, their nationalities and citizenships which are unknown to defendant but which she believes to be as hereinafter set forth, and the material and necessary testimony they are expected to give, in substance and effect, are as follows:

1. Albert Rickert, Care Pacific American Fisheries, Bellingham, Washington, a U. S. citizen, to testify that he was a non-commissioned officer in the

U. S. Marine Corps held as a prisoner of war by the Japanese along with over twenty-five other U. S. and Allied officers and men and civilian personnel, each of whom he is to identify, at Bunka Prison Camp, Tokyo, Japan, from about November, 1943, to about August 15, 1945; that said persons were coerced and intimidated by their oppressors into broadcasting for the Japanese at Radio Tokyo under threats of the Japanese authorities that if they refused to obey they would be executed; that they were beaten by their Japanese oppressors and were starved and that they were forced to eat leaves, cats and dogs to sustain their lives; to identify the defendant and the female announcers at Radio Tokyo and to state their respective activities during said period of time and to relate the conditions under which they and the said prisoners were compelled to labor and suffer and to the fact that the Kempeitai kept them all under constant surveillance and fear; that the said prisoners secretly received tobacco, food and medicine from the defendant and others who sustained them in their efforts to defeat the purposes of the Japanese; that a number of said prisoners made complaints against their said mistreatment to the Japanese authorities.

2. Edwin Kalbfleish, Jr., 1702 Bellevue, Richmond Heights, 17, Missouri, a U. S. citizen, to testify that he was a U. S. army officer who was taken prisoner by the Japanese in 1942 and thereafter was detained by them at Bunka Prison Camp, Tokyo, Japan, from October, 1942, or earlier, to the

summer of 1945, along with over twenty-five other U. S. and Allied officers and men and civilian personnel; that during said period said persons were held under duress and were intimidated and coerced into broadcasting via radio for their Japanese oppressors' under threats against their lives if they failed to obey; that they were mistreated, beaten and starved by the Japanese; that the announcers on the Zero Hour and other broadcast programs were compelled to broadcast by the Japanese and that, although they were kept under constant surveillance by the Kempeitai and other Japanese authorities, they managed to defeat the purposes of the Japanese and to relate the methods employed in so doing; to identify the male and female announcers on those programs and to testify to the nature and contents of their broadcasts and the names of the persons who composed the script therefor; that a number of persons, including the defendant, secretly conveyed food to the said prisoners of war to sustain them; that he and other prisoners complained to the Japanese authorities about the conditions under which they were forced to live and to produce copies of his and their written complaints and reports of their suffering so made.

Affiant alleges upon information and belief that each of the foregoing named witnesses is ready, willing and able to come to San Francisco to testify in behalf of the defendant provided his or her travel and subsistence expenses and witness fees will be defrayed.

Affiant alleges that the failure or refusal of the Court to authorize the production of the said witnesses to testify in person for the defendant at the trial herein or the failure of the Government to authorize subpoenas to be issued and served upon them and said witnesses to be produced at the trial herein for said purposes at the expense of the Government and will result in a failure of justice and deprive her of a fair and impartial jury trial and of her right to obtain witnesses in her favor and of the due process of law guaranteed her by the provisions of the Sixth and Fifth Amendments of the U. S. Constitution.

/s/ IVA IKUKO TOGURI
D'AQUINO,
Affiant.

Subscribed and sworn to before me this 24th day of May, 1949.

[Seal] /s/ C. M. TAYLOR,
Deputy Clerk, U. S. District Court, Northern District of California.

Receipt of copy acknowledged.

[Endorsed]: Filed May 24, 1949.

[Title of District Court and Cause.]

ORDER GRANTING DEFENDANT'S MOTION
FOR ORDER AUTHORIZING AND DI-
RECTING ISSUANCE AND SERVICE OF
SUBPOENAS OF DEFENDANT'S WIT-
NESSES AT TRIAL HEREIN AT THE EX-
PENSE OF THE GOVERNMENT

The motion of the defendant for order authorizing and directing the issuance and service of subpoenas requiring the attendance of defendant's witness at the trial herein at the expense of the Government, filed herein on May 24, 1949, having come on to be heard on May 31, 1949, Wayne M. Collins, Esq., appearing for the defendant and Frank J. Hennessy, U. S. Attorney, appearing for the plaintiff, and the motion having been duly argued and thereupon submitted to the Court for decision and the motion being duly considered by the Court,

The Court finds that each of the herein named witnesses is a necessary and material witness for the defendant at the trial of said action and is a witness whose testimony is necessary and material to the defendant in her defense to said action; that the defendant cannot safely proceed to a trial of said action without the production of the person of each said witness in court at the trial herein to testify in person so that the individual testimony, attitude and demeanor of each can be observed, considered and weighed by the Court and the jury at the trial herein; and that the defendant is indigent

and does not have sufficient means and is actually unable to pay the fees for the issuance and service of subpoenas and the production of said witnesses at the trial herein and is actually unable to pay the expenses of transportation of said witnesses to attend the said trial; and that a denial of said motions would violate the provisions of Rule 17 RCP and deprive the defendant of her substantial constitutional rights to an impartial trial by jury and to obtain witnesses in her favor, 'contrary to the provisions of the Fifth and Sixth Amendments,

Now, Therefore, It Is Ordered that the defendant's said motions be granted and that subpoenas be issued for the defendant's witnesses, hereinafter named, at their respective places of residence and be served upon them and that the cost thereof and their respective witness fees and travel expenses to attend the trial of the cause herein be paid by the United States Government, to-wit:—

1. Albert Rickert, Care Pacific American Fisheries, Bellingham, Washington
2. Edwin Kalbfleish, Jr., 1702 Bellevue, Richmond Heights 17, Missouri

Dated: June 1st, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed June 1, 1949.

[Title of District Court and Cause.]

MOTION FOR LISTS OF WITNESSES
AND VENIREMEN

The defendant moves this Court, under Title 18 USCA, Sec. 3432, (formerly Sec. 562), for the order of this Court requiring the plaintiff or its counsel to supply the defendant with a list of the names of the witnesses to be produced on the trial for proving the indictment herein together with a statement giving the place of abode of each such witness and also for its order requiring the plaintiff or its counsel to supply the defendant at least three entire days before the trial with a list of the veniremen stating the abode of each venireman.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Points and Authorities in Support of Motion

Title 18 USCA, Sec. 3432 (formerly Sec. 562) reads as follows:

“A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness.”

The provision is mandatory. See *Logan v. U. S.* 144 U. S. 263, 304, and *McNabb v. U. S.* (CCA-

Tenn), 123 Fed. 2d. 848, 853, rev. on other grounds, 318 U. S. 332. The purpose of the statute is to enable a defendant to investigate the jurors and the witnesses.

Respectfully submitted,

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 16, 1949.

[Title of District Court and Cause.]

MOTION FOR SUPPLEMENTAL ORDER AUTHORIZING ADDITIONAL SUBSISTENCE EXPENSES TO BE PAID DEFENDANT'S COUNSEL FOR ATTENDING EXAMINATIONS OF WITNESSES

Defendant moves the Court for its order authorizing the Government to pay to her counsel Theodore Tamba, Esq., the additional sum of Three Hundred Dollars (\$300.00) as and for his subsistence expenses while engaged in the taking of depositions of defendant's witnesses in Japan in this cause.

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

State of California,

City and County of San Francisco—ss.

Theodore Tamba, being first duly sworn, deposes and says: that on March 25, 1949, he departed by

plane for Japan via the Northwest Airline and on arrival there located witnesses for the defense, interviewed them and took some thirty one (31) depositions for and on behalf of the defendant in the foregoing cause; that he returned by plane via said Northwest Airline and arrived in San Francisco, California, on the night of June 7, 1949; that traveling to and from Japan and the taking of said depositions consumed a total of seventy-five (75) days; that heretofore, by order of this Court made and entered herein on March 15, 1949, his subsistence expenses, at the rate of \$10 per day, was estimated to amount to a sum of \$450 covering an estimated period of forty-five (45) days and was authorized to be paid by the Government; by reason of the fact, that the taking of the necessary and material depositions necessarily consumed a total of seventy-five (75) days, that is to say, thirty (30) days in addition to the number of days originally estimated and provided for by the said order of this Court, he requests an order of this Court authorizing that the said sum of three hundred dollars (\$300.00) be paid to him by the Government for said subsistence.

/s/ THEODORE TAMBA.

Subscribed and sworn to before me this 16th day of June, 1949.

[Seal] /s/ ERNEST BESIG,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed June 16, 1949.

[Title of District Court and Cause.]

MOTION FOR PRODUCTION OF DOCUMENTARY EVIDENCE

(Rule 17(c) RCP)

Defendant moves the Court for its order directing Frank J. Hennessy, U. S. Attorney, and Tom DeWolfe, Special Assistant to the Attorney General, attorneys for the plaintiff, to produce before the above-entitled Court, for inspection by the defendant and her counsel, at a time to be determined by the Court prior to the trial or prior to the time when they are to be offered or sought to be offered in evidence or used at the trial herein, the following documents:—

1. The original, or copies of, letters, radiograms, wireless messages and other written memoranda, including requests, orders, instructions or process of the Attorney General, the Department of Justice or its agents, addressed or sent to the Supreme Commander, Allied Powers (SCAP), Tokyo, Japan, the Commander of the U. S. Eighth Army in Japan, the Counter Intelligence Corps, U. S. Army, in Japan, the Commanding Officer of Sugamo Prison in Tokyo, Japan, the Commanding Officer of Yokohama Prison in Yokohama, Japan, the Secretary of State and Department of State in Washington, and to its consular or other agent or agents in Japan, and replies received thereto from said officers, departments or agents between on or about August 15,

1945, to and including September 25, 1948, complaining of the defendant or directing or requesting the following things: the arrest of the defendant on or about September 5, 1945, at Yokohama, Japan, by agents of the U. S.; her detention there until September 6, 1945, and her then release therefrom; the arrest of the defendant on or about October 16, 1945, at Tokyo, Japan, by agents of the U. S. and her imprisonment by them at the Yokohama Prison in Yokohama, Japan, until November 16, 1945, and thereafter from then to October 25, 1946, at the Sugamo Prison in Tokyo, Japan, and her then release therefrom; her arrest on or about August 26, 1948, at Tokyo, Japan, by agents of the U. S., and imprisonment in Sugamo Prison, Tokyo, Japan, and her transportation therefrom to the S. S. General F. R. Hodges, a U. S. transport vessel, and thence to San Francisco, California, by said vessel which here arrived on September 25, 1948; or relating to any of said things.

2. The original or copies of letters, radiograms, wireless messages and other written memoranda, including requests, orders, instructions or process of the Supreme Commander, Allied Powers (SCAP), Tokyo, Japan, addressed or sent to Tom C. Clark, Attorney General, or the Department of Justice, Washington, D. C., or to the agents of said Department, the Commander of the U. S. Eighth Army in Japan, the Counter Intelligence Corps, U. S. Army, in Japan, the Commanding Officer of Sugamo

Prison in Tokyo, Japan, the Commanding Officer of Yokohama Prison in Yokohama, Japan, the Secretary of State or Department of State in Washington, D. C., and to its consular or other agent or agents in Japan, and replies received thereto from said officers, departments or agents, between on or about August 15, 1945, to and including September 25, 1948, authorizing, directing or requesting the following things: the arrest of the defendant on or about September 5, 1945, at Yokohama, Japan, by agents of the U. S.; her detention there until September 6, 1945, and her then release therefrom; the arrest of the defendant on or about October 16, 1945, at Tokyo, Japan, by agents of the U. S. and her imprisonment by them at the Yokohama Prison in Yokohama, Japan, until November 16, 1945, and thereafter from then to October 25, 1946, at the Sugamo Prison in Tokyo, Japan, and her then release therefrom; her arrest on or about August 26, 1948, at Tokyo, Japan, by agents of the U. S., and imprisonment in Sugamo Prison, Tokyo, Japan, and her transportation therefrom to the S. S. General F. R. Hodges, a U. S. transport vessel, and thence to San Francisco, California, by said vessel which here arrived on September 25, 1948; or relating to any of said things.

3. The original or copies of letters, radiograms, wireless messages and other written memoranda, including requests, orders, instructions and process of the Secretary of State, the Department of State, and also of its consular or other agent or agents in Japan, addressed or sent to Tom C. Clark, as the

Attorney General, or to the Department of Justice or agents of said Department, the Supreme Commander, Allied Powers (SCAP), Tokyo, Japan, the Commander of the U. S. Eighth Army, in Japan, the Counter Intelligence Corps, U. S. Army, Japan, the Commanding Officer of Sugamo Prison in Tokyo, Japan, and the replies received thereto from said officers, departments or agents, between on or about August 15, 1945, to and including September 25, 1948, authorizing, directing or requesting the following things: the arrest of the defendant on or about September 5, 1945, at Yokohama, Japan, by agents of the U. S.; her detention there until September 6, 1945, and her then release therefrom; the arrest of the defendant on or about October 16, 1945, at Tokyo, Japan, by agents of the U. S. and her imprisonment by them at the Yokohama Prison in Yokohama, Japan, until November 16, 1945, and thereafter from then to October 25, 1946, at the Sugamo Prison in Tokyo, Japan, and her then release therefrom; her arrest on or about August 26, 1948, at Tokyo, Japan, by agents of the U. S., and imprisonment in Sugamo Prison, Tokyo, Japan, and her transportation therefrom to the S. S. General F. R. Hodges, a U. S. transport vessel, and thence to San Francisco, California, by said vessel which here arrived on September 25, 1948; or relating to any of said things.

4. Any and all written charges, accusations or complaints made, brought or filed by authority of

the plaintiff, the United States, including the United States Army, SCAP, the U. S. Eighth Army, the Counter Intelligence Corps of the U. S. Army in Japan, the Attorney General, the Department of Justice, and the State Department in Japan, against the defendant between August 13, 1943, and September 25, 1948, together with any and all records made or kept of any and all examinations, hearings or trials of the defendant had thereon and the disposition made thereof.

5. The original records, or copies thereof, of the Sugamo Prison and Yokohama Prison relating to the defendant, and, in particular, those records, letters, messages, files, letters, instructions and process relating to the arrests, incarcerations and releases of the defendant from imprisonment as mentioned in paragraphs 1, 2, 3, and 4 hereinabove.

6. Any and all radio script, or copies thereof, the plaintiff asserts or claims was prepared, composed, written, typed, used, read, announced or broadcast by radio by the defendant between about November 1, 1943, and on or about August 13, 1945, at or from Radio Tokyo or Radio Station JOAK in Japan.

7. Any and all phonographic recordings the plaintiff asserts or claims to be made of the defendant's voice between about November 1, 1943, to on or about August 13, 1945, and since then.

8. Any and all musical records or recordings the plaintiff asserts or claims the defendant played or

broadcast or caused to be played or broadcast between about November 1, 1943, and August 13, 1945, from Radio Tokyo or Radio Station JOAK in Japan.

9. Any and all statements in writing made, executed, signed or initialed by the defendant for the plaintiff or for any agent or agents of the plaintiff or for any other person or persons or asserted or claimed by the plaintiff to have been made by the defendant between Aug. 15, 1945, and Sept. 25, 1948, relating to her life, employment and conduct in Japan from about July 1, 1941, to about September 25, 1948.

10. Any and all oral statements the plaintiff asserts or claims was made by the defendant to the plaintiff or to any agent or agents of the plaintiff or any other person or persons between August 15, 1945, and Sept. 25, 1948, and transcribed or reduced to writing relating to her life, employment and conduct in Japan from about July 1, 1941, to about Sept. 25, 1948.

11. Any and all other records of the plaintiff or U. S. Government departments or agents bearing on this case.

The above-mentioned books, papers, documents and objects are identical with those designated in the subpoena heretofore issued and served upon counsel for the plaintiff.

/s/ WAYNE M. COLLINS,

Attorney for Defendant.

[Endorsed]: Filed June 16, 1949.

[Title of District Court and Cause.]

NOTICE

To Frank J. Hennessy, U. S. Attorney, and Tom DeWolfe, Special Assistant to the Attorney General, Attorneys for plaintiff:

You and each of you will please take notice that on Monday the 20th day of June, 1949, in the Courtroom of the above-entitled Court the defendant will bring on for hearing her motion for production of documentary evidence, her motion for supplemental order authorizing additional subsistence expenses to be paid defendant's counsel for attending examination of witnesses and motion for list of witnesses and veniremen.

/s/ WAYNE M. COLLINS,
Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 16, 1949.

[Title of District Court and Cause.]

ORDER GRANTING MOTION FOR SUPPLEMENTAL ORDER AUTHORIZING ADDITIONAL SUBSISTENCE EXPENSES TO BE PAID BY THE GOVERNMENT TO DEFENDANT'S COUNSEL FOR ATTENDING EXAMINATIONS OF WITNESSES

The defendant's motion for supplemental order authorizing additional subsistence expenses to be paid defendant's counsel for attending examinations of witnesses abroad coming on regularly to be heard this 20th day of June, 1949, Wayne M. Collins, Esq., appearing for the defendant, and Frank J. Hennessy, U. S. Attorney, and Tom DeWolfe, Special Assistant to the Attorney General, appearing for the plaintiff, and the matter thereupon being submitted to the Court for decision and being duly considered by the Court, it is ordered that said motion be granted and that the sum of Three Hundred Dollars (\$300.00) be paid to defendant's counsel, Theodore Tamba, Esq., for the thirty (30) day subsistence expenses in addition to that of the subsistence expenses heretofore allowed by order of Court dated March 15, 1949, for attending the examinations and taking of depositions of defendant's witnesses in Japan.

Dated: June 20, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed June 20, 1949.

District Court of the United States, Northern District of California, Southern Division

At A Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 20th day of June, in the year of our Lord one thousand nine hundred and forty-nine. Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Order granting motion for additional expenses, etc., motion to quash subpoena duces tecum served on Mr. Hennessy, and motion for list of witnesses and veniremen.)

This case came on for hearing on motion to produce, motion for additional expenses, and motion for lists. Defendant was present in custody of U. S. Marshal. After hearing the arguments of Wayne Collins, Esq., attorney for defendant, and Hon. Frank J. Hennessy, U. S. Attorney, it is Ordered that the motion for additional expenses, etc., be granted; that the motion to quash subpoena duces tecum served on Mr. Hennessy be granted; and that the motion for a list of witnesses and veniremen be granted, said list to be served at least three days prior to the trial. Ordered case continued to June 22, 1949 for hearing on motion to produce.

[Title of District Court and Cause.]

ORDER REQUIRING PLAINTIFF TO SUPPLY DEFENDANT WITH LISTS OF VENIREMEN AND WITNESSES

The motion of the defendant for lists of witnesses and veniremen, filed herein on June 16, 1949, having come on regularly for hearing the 20th day of June, 1949, Wayne M. Collins, Esq., appearing for the defendant, and Frank J. Hennessy, U. S. Attorney, appearing for the plaintiff, and the motion being duly argued and submitted to the Court for decision.

It Is Ordered that the plaintiff or the plaintiff's counsel supply to the defendant or defendant's counsel at least three days before the commencement of the trial herein a list of the veniremen and a list of the witnesses to be produced by the plaintiff on the trial for proving the indictment, stating the place of abode of each venireman and witness.

Dated: June 22nd, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

Receipt of copy attached.

[Endorsed]: Filed June 22, 1949.

[Title of District Court and Cause.]

SUBPOENA TO TESTIFY

To: Tom DeWolfe, Special Assistant to the Attorney General, and Frank J. Hennessy, U. S. Attorney.

You are hereby commanded to appear in the District Court of the United States for the Northern District of California at Room 338, Post Office Building in the city of San Francisco, California, on the 5th day of July, 1949, at 10:00 o'clock a.m. to testify in the case of the United States v. Iva Ikuko Toguri d'Aquino.

And bring with you the following:

1. The original, or copies of, letters, radiograms, wireless messages and other written memoranda, including requests, orders, instructions or process of the Attorney General, the Department of Justice or its agents, addressed or sent to the Supreme Commander, Allied Powers (SCAP), Tokyo, Japan, the Commander of the U. S. Eighth Army in Japan, the Counter Intelligence Corps, U. S. Army, in Japan, the Commanding Officer of Sugamo Prison in Tokyo, Japan, the Commanding Officer of Yokohama Prison in Yokohama, Japan, the Secretary of State and Department of State in Washington, and to its consular or other agent or agents in Japan, and replies received thereto from said officers, departments or agents between on or about August 15,

1945, to and including September 25, 1948, complaining of the defendant or directing or requesting the following things: the arrest of the defendant on or about September 5, 1945, at Yokohama, Japan, by agents of the U. S.; her detention there until September 6, 1945, and her then release therefrom; the arrest of the defendant on or about October 16, 1945, at Tokyo, Japan, by agents of the U. S. and her imprisonment by them at the Yokohama Prison in Yokohama, Japan, until November 16, 1945, and thereafter from then to October 25, 1946, at the Sugamo Prison in Tokyo, Japan, and her then release therefrom; her arrest on or about August 26, 1948, at Tokyo, Japan, by agents of the U. S., and imprisonment in Sugamo Prison, Tokyo, Japan, and her transportation therefrom to the S. S. General F. R. Hodges, a U. S. transport vessel, and thence to San Francisco, California, by said vessel which here arrived on September 25, 1948; or relating to any of said things.

2. The original or copies of letters, radiograms, wireless messages and other written memoranda, including requests, orders, instructions or process of the Supreme Commander, Allied Powers (SCAP), Tokyo, Japan, addressed or sent to Tom C. Clark, Attorney General, or the Department of Justice, Washington, D. C., or to the agents of said Department, the Commander of the U. S. Eighth Army in Japan, the Counter Intelligence Corps, U. S. Army, in Japan, the Commanding Officer of Sugamo

Prison in Tokyo, Japan, the Commanding Officer of Yokohama Prison in Yokohama, Japan, the Secretary of State or Department of State in Washington, D. C., and to its consular or other agent or agents in Japan, and replies received thereto from said officers, departments or agents, between on or about August 15, 1945, to and including September 25, 1948, authorizing, directing or requesting the following things: the arrest of the defendant on or about September 5, 1945, at Yokohama, Japan, by agents of the U. S.; her detention there until September 6, 1945, and her then release therefrom; the arrest of the defendant on or about October 16, 1945, at Tokyo, Japan, by agents of the U. S. and her imprisonment by them at the Yokohama Prison in Yokohama, Japan, until November 16, 1945, and thereafter from then to October 25, 1946, at the Sugamo Prison in Tokyo, Japan, and her then release therefrom; her arrest on or about August 26, 1948, at Tokyo, Japan, by agents of the U. S., and imprisonment in Sugamo Prison, Tokyo, Japan, and her transportation therefrom to the S. S. General F. R. Hodges, a U. S. transport vessel, and thence to San Francisco, California, by said vessel which here arrived on September 25, 1948; or relating to any of said things.

3. The original or copies of letters, radiograms, wireless messages and other written memoranda, including requests, orders, instructions and process of the Secretary of State, the Department of State, and also of its consular or other agent or agents in

Japan, addressed or sent to Tom C. Clark, as the Attorney General, or to the Department of Justice or agents of said Department, the Supreme Commander, Allied Powers (SCAP), Tokyo, Japan, the Commander of the U. S. Eighth Army, in Japan, the Counter Intelligence Corps, U. S. Army, Japan, the Commanding Officer of Sugamo Prison in Tokyo, Japan, and the replies received thereto from said officers, departments or agents, between on or about August 15, 1945, to and including September 25, 1948, authorizing, directing or requesting the following things:—the arrest of the defendant on or about September 5, 1945, at Yokohama, Japan, by agents of the U. S.; her detention there until September 6, 1945, and her then release therefrom; the arrest of the defendant on or about October 16, 1945, at Tokyo, Japan, by agents of the U. S. and her imprisonment by them at the Yokohama Prison in Yokohama, Japan, until November 16, 1945, and thereafter from then to October 25, 1946, at the Sugamo Prison in Tokyo, Japan, and her then release therefrom; her arrest on or about August 26, 1948, at Tokyo, Japan, by agents of the U. S., and imprisonment in Sugamo Prison, Tokyo, Japan, and her transportation therefrom to the S. S. General F. R. Hodges, a U. S. transport vessel, and thence to San Francisco, California, by said vessel which here arrived on September 25, 1948; or relating to any of said things.

4. Any and all written charges, accusations or complaints made, brought or filed by authority of

the plaintiff, the United States, including the United States Army, SCAP, the U. S. Eighth Army, the Counter Intelligence Corps of the U. S. Army in Japan, the Attorney General, the Department of Justice, and the State Department in Japan, against the defendant between August 13, 1943, and September 25, 1948, together with any and all records made or kept of any and all examinations, hearings or trials of the defendant had thereon and the disposition made thereof.

5. The original records, or copies thereof, of the Sugamo Prison and Yokohama Prison relating to the defendant which heretofore were delivered or sent to you, the Attorney General or the Department of Justice by the authorized custodian thereof from Japan subsequent to the time in April or May of 1949, when access thereto and examination thereof were denied to Theodore Tamba, Esq., who was acting as counsel for and on behalf of the defendant, and when the taking of the deposition thereon of such custodian by said Theodore Tamba, Esq., relating thereto was refused by such custodian, and, in particular, those records, letters, messages, files, letters, instructions and process relating to the arrests, incarcerations and releases of the defendant from imprisonment as mentioned in paragraphs 1, 2, 3 and 4 hereinabove.

6. Any and all radio script, or copies thereof, the plaintiff asserts or claims was prepared, composed, written, typed, used, read, announced or

broadcast by radio by the defendant between about November 1, 1943, and on or about August 13, 1945, at or from Radio Tokyo or Radio Station JOAK in Japan.

7. Any and all phonographic recordings the plaintiff asserts or claims to be made of the defendant's voice between about November 1, 1943, to on or about August 13, 1945, and since then.

8. Any and all musical records or recordings the plaintiff asserts or claims the defendant played or broadcast or caused to be played or broadcast between about November 1, 1943, and August 13, 1945, from Radio Tokyo or Radio Station JOAK in Japan.

9. Any and all statements in writing made, executed, signed or initialed by the defendant for the plaintiff or for any agent or agents of the plaintiff or for any other person or persons or asserted or claimed by the plaintiff to have been made by the defendant between Aug. 15, 1945, and Sept. 25, 1948, relating to her life, employment and conduct in Japan from about July 1, 1941, to about September 25, 1948.

10. Any and all oral statements the plaintiff asserts or claims was made by the defendant to the plaintiff or to any agent or agents of the plaintiff or any other person or persons between August 15, 1945, and Sept. 25, 1948, and transcribed or reduced to writing relating to her life, employment and

conduct in Japan from about July 1, 1941, to about Sept. 25, 1948.

11. Any and all other records of the plaintiff or U. S. Government departments or agents bearing on this case.

This subpoena is issued on application of the defendant.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ [Indistinguishable]
Deputy Clerk.

Returns on service of copy attached.

[Endorsed]: Filed June 22, 1949.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 22nd day of June, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order quashing subpoena duces tecum issued to Mr. DeWolfe;

Minute order denying defendant's motion to produce.)

Case came on for hearing on motion to produce. Defendant was present in custody of U. S. Marshal and with her attorney, Wayne Collins, Esq. Tom DeWolfe, Esq., Special Assistant to the Attorney General, was present for the United States. Mr. DeWolfe made a motion to quash subpoena duces tecum issued to him. After hearing the arguments of the attorneys, it is Ordered that the said motion be granted; and that the defendant's motion to produce be denied.

[Title of District Court and Cause.]

Appearance

Mr. Clerk:

Enter our appearance as attorneys for the defendant in the above-entitled case.

Dated at San Francisco, Cal., on 5th day of July, 1949.

/s/ WAYNE M. COLLINS,

/s/ THEODORE TAMBA,

/s/ GEORGE OLSHAUSEN.

[Endorsed]: Filed July 5, 1949.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 12th day of August, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order that oral motion for judgment of acquittal be continued to August 13, 1949.)

The defendant, the attorneys, and the jurors impanelled herein being present as heretofore, the further trial of this case was this day resumed. Robert Cowan, Mariano Villarin, Chas. Hall and Richard Henschel were sworn and testified on behalf of the United States. Mr. De Wolfe introduced in evidence and filed U. S. Exhibit No. 44. The United States then rested. Mr. Olshausen made a motion for judgment of acquittal. It is Ordered that this case be continued to August 13, 1949, at 9:00 a.m., for further trial.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Saturday, the 13th day of August, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order denying defendant's motion for judgment of acquittal.)

The defendant and the attorneys being present as heretofore, the further trial of this case was this day resumed. The jurors were not present. The Court proceeded to hear the arguments on the defendant's motion for a judgment of acquittal. After hearing the arguments of Mr. Olshausen and Mr. De Wolfe, it is Ordered that said motion be denied. It is Ordered that this case be continued to August 15, 1949, at 10 a.m., for further trial.

[Title of District Court and Cause.]

MOTION FOR ORDER FOR PRODUCTION,
EXAMINATION AND INSPECTION OF
RECORDS AND SCRIPTS

Defendant, supplementing her oral motions heretofore made during the course of the prosecution's case, moves for the order of this Court requiring the plaintiff to produce in court and to permit the defendant to examine and inspect the following:

1. The five phonographic recordings to which the prosecution's witness Sam Cavanar testified to on his direct examination, commencing on line 16 of page 2226 down to and including line 4 on page 2227 of the reporter's transcript, Vol. XXI, of August 3, 1949, and on line 7 of page 2227 thereof down to and including the material on line 15 thereof on cross-examination.

2. The five phonographic recordings to which the prosecution's witness William Halbert Thompson testified to on his direct examination, commencing on line 18 of page 2250 down to and including the material on line 9 on page 2251 of the reporter's transcript, Vol. XXI, of August 3, 1949, and the material mentioned on line 15 of page 2273 of said transcript down to and including the material on line 8 of page 2274 thereof relating to the cross-examination of said witness.

3. The five phonographic recordings of programs of the Zero Hour program, or parts thereof, deliv-

ered into the possession of the plaintiff, or its agent Fred Tillman or agents of the plaintiff in Japan during the latter part of 1948 or during the early part of 1949 by Ruth Hayakawa.

4. The radio scripts and the motion picture, together with its sound recording tract, insofar as the said motion picture incorporates the said radio scripts of the defendant to which the witness Robert Cowan testified on August 12, 1949, on his direct examination, at pages 2810, line 16 to 24, inclusive, page 2824, lines 17 to 25 inclusive, page 2825, lines 1 to 3, inclusive, page 2827, lines 5 to 25 inclusive and page 2828, lines 1 to 3 inclusive on his cross-examination, said page and line references appearing in the reporter's transcript of the trial herein on August 12, 1949, transcript No. XXVI.

Dated: August 13, 1949.

/s/ WAYNE M. COLLINS,
/s/ GEORGE OLSHAUSEN,
/s/ THEODORE TAMBA,
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 13, 1949.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 19th day of September, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order denying motion to strike certain testimony; to strike U. S. Exhibits Nos. 2 and 15; to dismiss Indictment; and motion for acquittal.)

The defendant, the attorneys and the jurors impanelled herein being present as heretofore, the further trial of this case was this day resumed. Frances Roth, Rafael Velasquez, Sr., and Rafael Velasquez, Jr., were sworn and testified on behalf of the United States. Mr. Knapp introduced in evidence and filed U. S. Exhibits Nos. 63-75. The United States rested its case in rebuttal. Both sides rested. The attorneys for the defendant made the following motions: to strike certain testimony; to strike U. S. Exhibits numbered 2 and 15; to dismiss

the indictment; and motion for acquittal. After hearing the arguments of the attorneys, it is Ordered that each of said motions be denied. It is Ordered that this case be continued to September 20, 1949, at 10 o'clock a.m. for further trial, and the jury after being duly admonished by the Court was excused until said time.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 26th day of September, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute Order re: Court's instruction to jury; Aileen McNamara, alternate juror, excused from further service; Marshal instructed to provide meals and lodging for jurors and two deputy marshals, etc.)

The defendant, the attorneys, and the jurors impanelled herein being present as heretofore, further

trial of this case was this day resumed. After hearing the instructions of the Court, the jury at 11:43 a.m. retired to deliberate upon its verdict. It is Ordered that alternate juror Aileen McNamara be excused from further service. It is Ordered that the U. S. Marshal furnish meals and lodgings for the jurors and two Deputy Marshals. At 2:41 p.m. the jury returned into the Courtroom, requested and received the written instructions of the Court, by stipulation. At 2:44 p.m. the jury again retired to deliberate upon its verdict. At 11:20 p.m. the jury retired for the night. Ordered case continued to September 27, 1949, for further trial.

District Court of the United States, Northern
District of California, Southern Division

At A Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 27th day of September, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order—re portions of transcript and exhibit requested by and delivered to jury; etc.)

The defendant, the attorneys, and the jurors impanelled herein being present as heretofore, the further trial of this case was this day resumed. At 11:42 a.m. the jury returned into Court, requested and received certain portions of the transcript. At 11:46 a.m. the jury again retired to deliberate upon its verdict. At 2:35 p.m. the jury returned into Court, requested and received certain portions of the transcript. At 2:36 p.m. the jury again retired to deliberate upon its verdict. At 3:56 p.m. the jury returned into Court, requested and received U. S. Exhibit No. 15. At 3:58 p.m. the jury again retired to deliberate upon its verdict. At 10:15 p.m. the jury retired for the night. Ordered case continued to September 28, 1949, for further trial.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco,

on Thursday, the 29th day of September, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order—re Jury requesting and receiving certain volumes of testimony, and further instructions of the Court; Jury's verdict and Special Findings, etc.)

The defendant, the attorneys, and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. At 11:40 a.m. the jury returned into Court, requested and received certain volumes of testimony. At 11:43 a.m. the jury again retired to deliberate upon its verdict. At 5:38 p.m. the jury returned into Court, requested and received further instructions. At 5:40 p.m. the jury again retired to deliberate upon its verdict. At 6:04 p.m. the jury returned into Court and upon being asked if they had agreed upon a verdict, replied in the affirmative and returned the following verdict and Special Findings which were ordered filed and recorded:

“We, the Jury, find as to the defendant at the bar as follows: Guilty.

s/ JOHN MANN,
Foreman.”

“Special Findings by the Jury

In accordance with the instruction already given by the Court, the jury makes the following findings:

I.

Did the jury find overt act 1., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

II.

Did the jury find overt act 2., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

III.

Did the jury find overt act 3., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

IV.

Did the jury find overt act 4., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

V.

Did the jury find overt act 5., as it is laid in the indictment, a treasonable act committed by the

defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

VI.

Did the jury find overt act 6., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

Yes

VII.

Did the jury find overt act 7., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

VIII.

Did the jury find overt act 8., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

San Francisco, California,
Sept. 29, 1949.

/s/ JOHN MANN,
Foreman."

The jury upon being asked if said verdict and Special Findings were its verdict and Special Findings, each juror replied that it was. The jury was polled. Ordered that the jury be discharged from further consideration hereof and be excused. On

motion of Mr. Collins, it is ordered that this case be continued to October 6, 1949, for judgment.

[Title of District Court and Cause.]

SPECIAL FINDINGS BY THE JURY

In accordance with the instruction already given by the Court, the jury makes the following findings:

I.

Did the jury find overt act 1., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

II.

Did the jury find overt act 2., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

III.

Did the jury find overt act 3., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

IV.

Did the jury find overt act 4., as it is laid in the indictment, a treasonable act committed by the

defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

V.

Did the jury find overt act 5., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

VI.

Did the jury find overt act 6., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

Yes

VII.

Did the jury find overt act 7., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

VIII.

Did the jury find overt act 8., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no.)

No

San Francisco, California, Sept. 29, 1949.

/s/ JOHN MANN,

Foreman.

[Endorsed]: Filed September 29, 1949.

In the Southern Division of the United States
District Court for the Northern District of
California, First Division

No. 31712-R

THE UNITED STATES OF AMERICA

vs.

IVA IKUKO TOGURI D'AQUINO

VERDICT

We, the Jury, find as to the defendant at the bar
as follows:

Guilty.

/s/ JOHN MANN,
Foreman.

[Endorsed]: Filed September 29, 1949.

[Title of District Court and Cause.]

MOTION FOR ARREST OF JUDGMENT
UNDER RULE 34

Defendant moves the court for an order arresting judgment under Rule 34 of the Rules of Criminal Procedure for the District Courts of the United States upon each of the following grounds:

1. The indictment does not state a public offense.
2. The court is without jurisdiction of the offense charged upon the ground that the Northern District of California is not the District to which defendant was first brought; on the contrary, the first territory under American jurisdiction to which defendant was first brought was the Island of Okinawa.
3. The court has no jurisdiction of the offense upon the ground that the indictment was based upon perjured and suborned testimony.
4. The court has no jurisdiction over the person of the defendant.

/s/ WAYNE M. COLLINS,
/s/ GEORGE OLSHAUSEN,
/s/ THEODORE TAMBA,

Receipt of copy attached.

[Endorsed]: Filed October 3, 1949.

[Title of District Court and Cause.]

MOTION FOR ACQUITTAL OR NEW TRIAL
UNDER RULE 29 (b)

Defendant hereby moves the court to set aside the verdict of guilty heretofore entered and to enter a judgment of acquittal or alternatively to grant a new trial under Rule 29(b) of the Rules of Criminal Procedure for the District Courts of the United States. Said motion will be made upon the ground that the evidence is insufficient to sustain the verdict of guilty and in particular is deficient upon each of the following grounds, among others:

1. Defendant's imprisonment in Japan upon suspicion of treason from September, 1945, until October, 1946, and her release on the latter date, if construed as arrest and release upon the charges contained in the indictment, show that the question of defendant's guilt or innocence has previously been passed upon and is now *res judicata* or that defendant has been once put in jeopardy. If construed as not based upon charges, said imprisonment for more than one year without charges after an arrest on suspicion of treason constituted a denial of a speedy trial in violation of Amendment VI to the United States Constitution.

2. The said imprisonment of the defendant for more than one year in Japan on suspicion of treason but without filing of charges coupled with the loss of material evidence as testified to by witness Rob-

ert Cowan constituted a denial of the right of a speedy trial in violation of Amendment VI to the U. S. Constitution.

3. Prosecution of defendant upon partial evidence after known loss of evidence by agents of the government as testified to by witness Robert Cowan constitutes denial of due process of law in violation of Amendment V to the U. S. Constitution.

4. Playing of the recordings contained in Exhibits 16 to 21 with earphones only for a judge, jury, defendant, counsel and members of the press but not for the public spectators so that such playing was inaudible to the public constituted denial of a public trial to the defendant in violation of Amendment VI to the U. S. Constitution.

5. Withholding by the government of the reports of witnesses Frederick G. Tillman and John Eldon Dunn of their interviews with Norman Reyes after the said witnesses have given direct testimony on this subject on rebuttal when such report was otherwise properly within the scope of the cross-examination of said witnesses constitutes a denial of due process of law in violation of Amendment V to the U. S. Constitution.

6. The uncontradicted evidence from the witnesses of both prosecution and defense that the defendant brought food, tobacco and medicines to the Allied prisoners of war creates a reasonable doubt

upon the issue of intent which must be declared by the court.

/s/ WAYNE M. COLLINS,
/s/ GEORGE OLSHAUSEN,
/s/ THEODORE TAMBA,

Points and Authorities:

U. S. v. McWilliams, 163 Fed. (2d) 695.

Curley v. U. S., 160 Fed. (2d) 229.

Receipt of copy attached.

[Endorsed]: Filed October 3, 1949.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL UNDER RULE 33

Defendant moves the court to set aside the verdict of guilty heretofore entered and to grant a new trial under Rule 33 of the Rules of Criminal Procedure for the District Courts of the United States upon each of the following grounds:

A. Errors of law in rulings on evidence excepted to by defendant.

B. Errors of law in the giving and refusal of instructions excepted to by defendant.

C. Misconduct of the prosecuting attorney excepted to by defendant.

Said grounds will include but will not be limited to the following:

1. The court erred in admitting Exhibit 24.
2. The court erred in admitting Exhibits 2 and 15.
3. The court erred in admitting fragmentary testimony upon the issue of intent which was offered by the Government in a way so as to make it impossible for defendant to show the context. In particular, the court erred in admitting Exhibits 16 to 21, 25 and the testimony of each of the following witnesses:

Gilbert V. Velasquez

Ted Sherdeman

Jules I. Sutter

Marshall Hoot

Sam Cavanar

William Halbert Thompson

David I. Gilmore

Robert Cowan

Charles F. Hall

Richard Henschel

Hishashi Moriyama

George Hideo Mitsushio ("cold water sure tastes good," etc.)

Shinjiro Igarashi

Motomu Nii

Mary Higuchi (second appearance)

Mariano S. Villarin

4. The giving of Instruction No. 22 telling the jury as a matter of law that Satoshi Nakamura was a witness to Overt Act 6.

5, Misstatement of the record in the argument of the prosecuting attorney in stating that Clark Lee testified to an alleged admission with respect to Overt Act No. 6.

6. Error in permitting cross-examination of the defendant relative to the truth or falsity of other witnesses.

7. Exclusion of evidence of duress upon persons other than defendant and of evidence of consequence of disobedience of Army orders.

8. Errors in permitting cross-examination of defendant with respect to Overt Act 8 on which defendant had not testified which was used as the basis for impeaching evidence and later used in the argument of the prosecution to impeach defendant's entire testimony.

9. Misconduct of the prosecutor in his argument to the jury in misstating testimony of F. Harris Sugiyama.

10. Misconduct of the prosecuting attorney in his argument to the jury in using Exhibit 52 as affirmative evidence rather than merely going to the impeachment of the witness, Norman Reyes, and failure of the court to give a limiting instruction when requested to do so at the time of the argument.

11. Exclusion of evidence as to the nature of the program broadcast by Myrtle Liston from Manila from the depositions of the witness Ken Murayama.

12. Exclusion of evidence tendered by the defendant as to the nature of broadcasts at hours other than 6:00 to 7:00 p.m., Tokyo time, after the prosecution had been permitted to show the contents of alleged broadcasts ranging on Tokyo time from 3:00 p.m. until midnight.

13. Repeated refusal by the court to permit defendant to make offers of proof after objections sustained to questions put to defendant's witnesses on direct examination.

14. Error in permitting questions calling for conclusions in the cross-examination of Norman Reyes.

15. Error in permitting questions calling for conclusions in the cross-examination of the defendant.

16. Exclusion of defendant's exhibit number BU for identification making the Geneva Convention applicable during World War II as between the United States and Japan both to prisoners of war and to interned civilians.

17. Error in refusing defendant's requested instructions relating to the Geneva Convention.

18. Exclusion of defendant's exhibit for identi-

fication BQ and BR, (Harry Brundidge's travel orders and passport).

19. Exclusion of those parts of the deposition of the witness Toshi Katsu Kodaira relating to the activities of Harry Brundidge in bribing or attempting to bribe witnesses against the defendant.

20. Exclusion of defendant's exhibit BT for identification (government subpoenas).

21. Exclusion of the testimony of the witness Kamini Kant Gupta to the effect that Army authorities considered the Zero Hour program a morale building program for the American troops.

22. Exclusion of defendant's exhibit BV for identification (Navy citation).

23. Refusal of each of the following instructions requested by defendant: 30A, 38, 39, 48, 49, 50, 65, 70, 71, 74, 75, 76, 79, 84, 85, 88, 92 to 104, 106 to 109, 110, 111, 112 to 138, 140, 139, 155, 156, 157, 161 to 169.

24. The giving of each of the following instructions (court's numbering) on the grounds heretofore specified in exceptions to the instructions: 8, 19, 25, 27, 38, 44, 45, 47, 50, 57.

25. Misconduct of the prosecuting attorney in arguing to the jury that this case should be a warning to others and that there may be other prosecutions.

26. Misconduct of the prosecuting attorney in sneering, bullying cross-examination, misstating the record to witnesses.

/s/ WAYNE M. COLLINS,
/s/ GEORGE OLSHAUSEN,
/s/ THEODORE TAMBA,

Receipt of copy attached.

[Endorsed]: Filed October 3, 1949.

[Title of District Court and Cause.]

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR NEW TRIAL UNDER
RULE 33

The following points are numbered to correspond with the numbers of the grounds for the motion:

1.

Exhibit N shows that at the time Exhibit 24 was taken, defendant had been in custody from September, 1945, to April, 1946; that she was released by the Army and turned over to agent Frederick G. Tillman for the purposes of interrogation. A statement taken while defendant is held for the purposes of interrogation after only six days of confinement is inadmissible. *Upshaw v. U. S.*, 335 U. S. 410, 93 L. Ed. Adv. Ops. 129 (reversed for that error alone).

4.

Instruction No. 22 told the jury categorically that Nakamura was a witness to Overt Act No. 6, instead of leaving it to the jury to decide whether or not he was testifying to the same incident as that described by Oki and Mitsushio.

Gardner v. Babcock, 70 U. S. 240, 18 L. Ed. 31, 33.

“The court could not tell the jury that any legal results followed from the evidence which only tended to prove the issue to be tried.” [Emphasis added.]

It was therefore error to withdraw the question from the jury whether Nakamura was testifying to the same or a different incident.

5.

Overt Act No. 6 concerned the battle of Leyte Gulf (Oki IX—680-81, Mitsushio XI—971, 974). Clark Lee testified about a fighter sweep off Formosa (VII—485, VIII—572). His is not testimony “to the same overt act.” In the oral argument, however, the U. S. attorney named Clark Lee as a corroborating witness to Overt Act 6 (the argument has not yet been transcribed) clearly misstating the record. Exception was taken (LIV—5940)—but the same argument was repeated later. The jury then requested leave to “examine . . . the transcripts of the testimony of the following relative to Overt Acts 5 and 6: Clark Lee, Oki, Mitsushio” (LIV—6001) showing they had been influenced by the prosecutor’s misstatement of the record. They re-

ported themselves unable to agree but ultimately convicted on Overt Act 6 alone. Statements of the prosecution outside or contrary to the record are in themselves reversible error. *Taliaferro v. U. S.*, 47 Fed. (2d) 699 (CCA9), followed in *Minker v. U. S.*, 85 Fed. (2d) 425, 426-7 (CCA 3). See also *Berger v. U. S.*, 295 U. S. 78, 84, 79 L. Ed., 1314, 1319 (Misstatement of evidence in questions).

6.

The defendant was repeatedly asked to characterize the testimony of other witnesses as "accurate," "true," "false" or "in error" XLVII—5249, 5258-9, 5301-2, XLIX—5405-6, 5428 (in effect), 5436-7, (Overt Act 6).

At the following places the characterization of another witness's testimony was insinuated:

XLVIII—5368-9, 5371-2, 5375-7, 5381.

XLIX—5396-7, 5403-4, 5407, 5451-2, 5455-6, 5458-67, 5474-5, 5477, 5490-91.

Such cross-examination is improper. *State v. Schleifer*, 102 Conn. 708, 130 Atl. 184, 191; *State v. Bradley*, 134 Conn. 102, 55 Atl. (2d) 114, 120; *Williams v. State*, 17 SW (2d) 56, 58, (Tex. App.); *Temple v. Duran*, 121 SW 253, 255 (Tex. App.). See also *McDowell v. U. S.*, 74 Fed. 403, 407 (improper to cross-examine on another person's statement). It may constitute prejudicial error (*State v. Schleifer*, 130 Atl., 184, 191 *supra*). In the present case it was undoubtedly prejudicial because of its frequent repetition and because it was used spe-

cifically respecting Overt Act 6 (XLIV—5436-7). Where objections to a line of questions are repeatedly overruled, it is not necessary to object to every question. *Wilson v. U. S.*, 4 Fed. (2d) 888, 889. At XLVIII—5377 the court stated that it had repeatedly overruled objections to these questions.

8.

Defendant gave no direct testimony on Overt Act No. 8. Nevertheless she was cross-examined upon it (XLIX—5440-5446). Her answers were used as basis for impeachment by the witness Roth and Exhibit 63 (LII—5852). On argument this evidence was then used to impeach defendant's entire testimony. A defendant testifying to only one part of a charge, cannot be cross-examined on another part. *Tucker v. U. S.*, 5 Fed. (2d) 818, 822, 824. Defendant having given no direct testimony on Overt Act 8, could not be cross-examined regarding it. Since the sequel of the cross-examination was used in argument to impeach defendant's entire testimony, the error is prejudicial despite the acquittal on Overt Act 8.

9.

The testimony of Sugiyama was misstated to change its sense. Exception taken LIV—5490, misconduct within the principle of *Taliaferro v. U. S.*, 47 Fed. (2d) 699, *supra*; *Berger v. U. S.*, 295 U. S. 78, *supra*.

10.

Exhibit 52 was limited to impeachment of the credibility of witness Reyes (XXXIII—3779). On

the oral argument this exhibit was repeatedly used as proving facts in the case. We twice requested instructions that it could not be used that way (LIV—5939, 5941). In neither instance was the requested instruction given. Misconduct falls within principle of *Taliaferro v. U. S.* and *Berger v. U. S.*

11-12.

The prosecution offered evidence of broadcasts ranging on Tokyo time from 3:00 p.m. (Hoot XX—2136-7, 2142—Gilbert Islands 6:00-7:00 p.m.) to midnight (Herschel XXVI—2960, 2988—Leyte, 9:00-11:00 p.m.). See in this connection defendant's Exhibit T, world time map.

The defense, however, was limited to rebuttal testimony covering only the hour 6:00-7:00 p.m., Tokyo time. See parts re Myrtle Liston, excluded from Ken Murayama's deposition, (XLIII—4727-8) and the following: Schenk XXXVI—4060-61; Matsui XXXVI—4126-30, 4143-4; Cox XXXVII—4264-5; Welker XXXVIII—4387-98; Hagedorn XXXVIII—4412-4424, 4337 (defendant's Exhibit Z for identification); Gallagher XXXIX—4376-7, 4380-85.

13.

An offer of proof must be made after objection sustained to a question on direct examination. See 1 Widmore on Evidence (3rd ed.) sec. 20, pp. 361 ff., Rules Crim. Proc. 26, adopting the common law; also Rules Civ. Proc. 43 (c). Defendant proposed making offers of proof in absence of jury, XXXVII—4291-2. Opportunity to make offers of proof was

denied at the following places: XXXV—3957-8 (Reyes), XXXVIII—4293-4303; (Kalbfleisch) XXXIX—4341-2 (Stanley). Where the defendant is thus prevented from completing a record to show prejudice, it is reversible error. Compare *People v. Sarrazawski*, 27 Cal. (2d) 7, 161 Pac. (2d) 934; *People v. Stevanson*, 103 Cal. App. 82, 284 Pac. 487.

25.

Exception taken LIV—5939, 5941. *Turk v. U. S.*, 20 Fed. (2d) 129, holds similar argument reversible error even after instruction to disregard.

26.

In cross-examination of defendant: XLVIII—5256-7 (distorting testimony of government witness Kuroishi, XXI—2280-85); XLVIII—5385; XLIX—5394-5, 5401 (attempting to make defendant deny facts previously testified to by government witness Tsuneishi, IV—251, VI—412); XLIX—5458-9 (misstatement of Cousens' testimony XXX—3432-3); L—5540-44 (attempting to make defendant deny facts already in evidence as Government Exhibit 9. This line of examination begins with the sneer "You talk, Mrs. d'Aquino, about filing applications for re-establishment of your American citizenship"—L—5540); XLVII—5310 (attempting to make defendant deny facts previously testified to by government witness Tsuneishi, V—321).

This type of misconduct is covered by *Berger v. U. S.*, 295, U. S. 78, 84.

Respectfully submitted,

/s/ WAYNE M. COLLINS,

/s/ GEORGE OLSHAUSEN,

/s/ THEODORE TAMBA.

Receipt of copy attached.

[Endorsed]: Filed October 3, 1949.

[Title of District Court and Cause.]

SUPPLEMENTAL GROUND IN SUPPORT
OF MOTION HERETOFORE FILED FOR
ACQUITTAL OR NEW TRIAL UNDER
RULE 29 (b)

7. The prosecution of defendant while instituting no prosecution against government witnesses Mitsushio and Moriyama who claimed to have become Japanese citizens in 1942 when it was impossible to do so and who according to their own testimony participated on the same program as defendant was a denial of equal protection guaranteed by Amendment V to the United States Constitution and elaborated in *Yick Wo vs. Hopkins*, 118 U. S. 356.

/s/ WAYNE M. COLLINS,

/s/ GEORGE OLSHAUSEN,

/s/ THEODORE TAMBA.

Receipt of copy attached.

[Endorsed]: Filed October 5, 1949.

[Title of District Court and Cause.]

SUPPLEMENTAL AUTHORITIES ON
MOTION FOR NEW TRIAL UNDER RULE 33

1. *Bram v. U. S.*, 168 U. S. 532, 541—statement of accused made to officers is to be treated as confession regardless of whether it is partly exculpatory.

Followed in *Ashcraft v. Tenn.*, 327 U. S. 274, 278, 90 L. Ed. 667, 670.

2. *Pierce v. U. S.*, 86 Fed. (2d) 949, 953—speaking of prejudicial suggestions by prosecutor “that it was intended to prejudice the jury is sufficient ground for a conclusion that in fact it did so.” (Judgment reversed despite trial court’s instruction to disregard.)

Beck v. U. S., 33 Fed. (2d), 107, 114—prosecutor’s questions leaving impressions “not intended by the witness.”

U. S. v. Nettl, 121 Fed. (2d), 927, 930—questions assuming the existence of damaging facts; alleged good motive of prosecutor immaterial.

3. Exhibit 63 was not offered to rebut claim of no propaganda on program (as stated by counsel for prosecution on oral argument on this motion); the exhibit offered for that purpose was No. 75 (Vol LII, p. 5859).

4. Rule 43 (c) of Civil Procedure does not give the judge discretion to reject an offer of proof; it

gives him discretion only (a) to require the offer to be made out of the presence of the jury, or (b) to add to the offer.

/s/ WAYNE M. COLLINS,
/s/ GEORGE OLSHAUSEN,
/s/ THEODORE TAMBA.

Receipt of copy attached.

[Endorsed]: Filed October 6, 1949.

[Title of District Court and Cause.]

MEMORANDUM ON BEHALF OF UNITED
STATES IN OPPOSITION TO DEFEND-
ANT'S MOTIONS FOR A NEW TRIAL,
JUDGMENT OF ACQUITTAL, AND IN
ARREST OF JUDGMENT.

Motion In Arrest Of Judgment

Matter alleged as ground in arrest of judgment must be such as would have been sufficient on motion to dismiss. *Hillegas v. U. S.*, 183 F. 199, cert. den. 219 U. S. 585, 55 L. ed. 347; *U. S. v. Maxey*, 200 F. 997. The motion must be based on matters appearing in the record which does not include the evidence or the charge. *Horwitz v. U. S.*, 5 F. 2d 129; *Demolli v. U. S.*, 144 F. 363; *Loewenthal v. U. S.*, 274 F. 563. Plainly, the general rule is that judgment in a criminal case will, after conviction, be arrested only for matters appearing of record which

would render the judgment, if entered, erroneous; the evidence being no part of the record for such purpose. *Horwitz v. U. S.*, 5 F. 2d 129, 131.

Defects in the indictment must be substantial, and not of form; the latter are deemed to be cured by the verdict. *F. R. Crim. P.* 52; *Hall v. U. S.*, 277 F. 19; *Gibson v. U. S.*, 31 F. 2d 19, cert. den. 279 U. S. 866, 73 L. ed. 1004; *Brewer v. U. S.*, 290 F. 807; *Gay v. U. S.*, 12 F. 2d 433. A motion in arrest will not lie for failure to prove venue. *Piacenza v. U. S.*, 293 F. 164.

Motion For Judgment Of Acquittal

The weight of conflicting evidence is not for this court. The question is the sufficiency of the Government's evidence to go to the jury and to sustain the verdict. *May v. U. S.*, 175 F. 2d 994, 1007. There being substantial evidence in support of the indictment, the court would err if it granted defendant's motion for judgment of acquittal. *Pierce v. U. S.*, 252 U. S. 239, 251, 252, 64 L. ed. 542. The question whether the effect of the evidence was such as to overcome any reasonable doubt of guilt was for the jury, not the court, to decide. *Pierce v. U. S.*, 252 U. S. 239, 251, 252, 64 L. ed. 542. On a motion for judgment of acquittal, previously known as a motion for an instructed verdict, the court is required to approach the evidence from a standpoint most favorable to the Government, and to assume the truth of the evidence adduced in support of the indictment. If on this basis there is substan-

tial evidence justifying an inference of guilt, irrespective of any countervailing testimony that may have been introduced, the motion for judgment of acquittal, if interposed prior or subsequent to verdict, must be denied, as a factual jury question only is involved. *U. S. v. Robinson*, 71 F. Supp. 9; *Curley v. U. S.*, 160 F. 2d 229; *F. R. Crim. P.* 29.

Motion For New Trial

The grant or denial of a motion for new trial rests in the sound discretion of the federal trial jurist, and your Honor's denial of defendant's motion is not reviewable in the absence of a clear showing of an abuse of discretion. *Mattox v. U. S.*, 146 U. S. 140, 36 L. ed. 917.

Conclusion

The post-trial motions should be denied.

Respectfully submitted,

/s/ FRANK J. HENNESSY,

United States Attorney.

/s/ TOM DeWOLFE,

/s/ JAMES W. KNAPP,

Special Assistants to the
Attorney General.

[Endorsed], Filed October 6, 1949.

DEFENDANT'S PROPOSED INSTRUCTIONS

(These instructions have been covered by the Court in other instructions. Defendant Excepts on the ground they have not been so covered.)

Defendant's Proposed Instruction No. 19

The jury are the sole judges of the credibility of and the weight which is to be given to the testimony of the witnesses testifying at this trial. In weighing the testimony of each witness they should give it careful scrutiny and consider all the circumstances under which the witness testified; his or her demeanor on the stand; the relation which he or she bears to the government; his or her apparent candor and fairness, or lack thereof; the reasonableness or unreasonableness of his or her story; the extent to which he or she is corroborated or contradicted by other credible evidence; and in short, any circumstances that tend to throw light upon his or her credibility.

United States v. Haupt, 47 F. Supp. 836, 840.

Defendant's Proposed Instruction No. 21

In order to justify a verdict of guilty based in part upon circumstantial evidence, the facts in the chain of circumstances relied upon must be consistent with the guilt of the accused, and inconsistent with every reasonable supposition of innocence. If the facts and circumstances shown by the evidence are as consistent with innocence as with

guilt, the jury should acquit the accused. As I shall instruct you hereafter, there are certain phases of the case for which circumstantial evidence is insufficient in law and on which the government is required to offer direct evidence. On all such issues you must find for the defendant if you find that the government has failed to produce the legally required amount of direct evidence.

Modeled on instruction 7-A in *U. S. v. Kawakita*, Crim. No. 19,665, U.S.D.C., S.D. Cal., Cen. Div.

Defendant's Proposed Instruction No. 27

The defendant, Iva Ikuko Toguri d'Aquino, is not charged with levying war against the United States, so it is not necessary to consider here that aspect of the crime of treason.

The alleged treason charged in the indictment is that the defendant adhered to the enemies of the United States, giving them aid and comfort in Japan.

Modeled on instruction 11-A given in *U. S. v. Kawakita*, Crim. No. 19,665, U.S.D.C., S.D. Cal., Cen. Div.

Defendant's Proposed Instruction No. 28

The crime of treason for the purposes of this case consists of two elements: adherence to the enemy, and rendering him aid and comfort.

Cramer v. United States, 325 U. S. 1, 29.

Defendant's Proposed Instruction No. 33

The fourth essential element of the charge in the indictment is the allegation:

That the overt act or acts so committed by the defendant actually gave aid and comfort to the enemies of the United States, to wit, the Government of Japan.

An overt act may not serve as a basis for conviction of the crime of treason unless the act be treasonable in character. That is to say, the overt act must be an act which "really was aid and comfort to the enemy."

In the words of the United States Supreme Court in the case of *United States v. Cramer*, decided April 23, 1945 (325 U. S. 1, 34):

"The very minimum function that an overt act must perform in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy."

Thus the character of the overt act must be judged in its setting, in the light of any related facts and events, in the light of all surrounding circumstances as shown by all the evidence. Overt acts of related events, may turn out to be acts which were not of aid or comfort to the enemy.

Modeled on instruction 11-0 given in *U. S. v. Kawakita*, Crim. No. 19,665, U.S.D.C., S.D. Cal., Cen. Div.

Defendant's Proposed Instruction No. 36

The seventh and eighth essential elements of the charge set forth in the indictment are:

That such overt act or acts of treason were so committed at or near Radio Tokyo on the Island of Honshu, Japan, outside the jurisdiction of any particular state or district of the United States; and that the Northern District of California is the district of the United States where the defendant was thereafter first brought.

The burden is upon the prosecution to prove beyond reasonable doubt those facts in order to show that this court—the United States District Court for the Northern District of California—is the place provided by law for the trial of the defendant for the offense of treason charged.

Article III, Sec. 2 of the Constitution of the United States provides that: "The Trial of all crimes . . . shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

Pursuant to the power thus conferred by the Constitution, the Congress in 1790 enacted in substance what is today Sec. 102 of Title 28 of the United States Code, which provides that: "The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district

where the offender is found, or into which he is first brought."

The crime of treason charged in the indictment, if committed by the defendant, was committed in Japan—"out of the jurisdiction of any particular state or district" of the United States. The Northern District of California covers generally the Northern portion of the State, including the City and County of San Francisco.

Modeled on instruction 11-Y given in U. S. v. Kawakita Criminal No. 19,665, U.S.D.C., Southern District of California, Central Division.

Defendant's Proposed Instruction No. 40

It is a well settled principle of law that a person cannot, by mere words, be guilty of treason.

Wimmer v. U. S., (CCA-6), 264 Fed. 11-13.

Defendant's Proposed Instruction No. 43

Overt acts cannot rest upon mere inference or conjecture.

In re Charge to Grand Jury, 30 Fed. Case No. 18,272, 1 Bond 609.

Defendant's Proposed Instruction No. 51

An act which renders aid and comfort to the enemy must be an act which actually and substantially strengthened or tended to strengthen the enemy in the conduct of the war; or an act which

actually and substantially weakened or tended to weaken the power of the country to resist or attack the enemy. -

Cramer v. United States, 325 U. S. 1, 29.

Defendant's Proposed Instruction No. 54

Before you can convict the defendant it is necessary that all twelve of you should agree on one and the same alleged overt act. It is not sufficient if some of you agree as to one alleged overt act and others agree as to another.

Defendant's Proposed Instruction No. 55

"The Court instructs the jury that witnesses testifying to oral or written statements made by the defendant before the commencement of this trial, are not witnesses within the meaning of the constitutional provision which requires two witnesses to the same overt act for a conviction of treason.

"The court further instructs the jury that neither oral nor written statements made by the defendant before the commencement of this trial, which have been testified to by one or more witnesses, can be considered by the jury as a substitute for the requirement of the Constitution of the United States that 'No person shall be convicted of Treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court.' "

(U. S. v. Haupt, 136 Fed. (2) 661, 674).

Defendant's Proposed Instruction No. 56

Witnesses testifying to the identity of the voice contained in the recordings as that of the defendant are not witnesses within the meaning of the constitutional provision which requires two witnesses to the same overt act for a conviction of treason.

United States v. Haupt, 136 F. 2nd 661.

Defendant's Proposed Instruction No. 59

Circumstantial evidence, no matter how conclusive, cannot supplant the Constitutional requirement that the overt act must be established by the testimony of two witnesses.

United States v. Robinson, 259 F. 685, 694.

Defendant's Proposed Instruction No. 60

The written statement of the defendant made to an agent of the Federal Bureau of Investigation cannot supply defects in the Constitutional requirement of two witnesses to the overt act.

Haupt v. United States, 91 L. Ed. 803, 809.

Defendant's Proposed Instruction No. 66

Motive and intent are not synonymous; motive is the moving cause which induces action and has to do with desire, while intent is the purpose or design with which an act is done and involves the will.

State v. Logan, 344 Mo. 351, 122 ALR 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 71

A citizen of the United States residing in Japan at the outbreak of war between the two and continuing to reside in Japan thereafter does not thereby adhere to the enemies of the United States.

The Venus, 8 Cranch 253.

Defendant's Proposed Instruction No. 72

Such a citizen of the States owes allegiance not only to the United States but also to Japan, such allegiance to Japan being a local allegiance.

The Venus, 8 Cranch 253.

Defendant's Proposed Instruction No. 75

If you find that the defendant did voluntarily commit one or more of the overt acts charged in the indictment and submitted for your consideration, and that such overt act or acts "actually gave aid and comfort to the enemy," but entertain a reasonable doubt as to whether the defendant had an intent to adhere to or assist our enemies in their prosecution of the war, or to hamper the United States in its prosecution of the war, then the defendant did not act with treasonable intent, and you must acquit her.

Modeled on instruction 11-X given in *U. S. v. Kawakita* Criminal No. 19,665, U.S.D.C., Southern District of California, Central Division.

Defendant's Proposed Instruction No. 110

The natural born subject of a belligerent country who leaves the land of his or her birth before the war and resides within the realm of the other belligerent without becoming naturalized or completely divested of his or her native rights is on the outbreak of war an alien enemy of the government under which he or she resides.

56 Am. Jur. 188.

Defendant's Proposed Instruction No. 111

If you find that the defendant was an American citizen at the time of the outbreak of the war between the United States and Japan on Dec. 8, 1941, and that she resided in Japan at that time, then in Japan she had the status of an alien enemy.

Cf. *Ludecke v. Watkins*, 335 U. S. 160.

Defendant's Proposed Instruction No. 140

No overt act charged in the indictment can constitute treason against the United States if at the time of the alleged overt act the defendant had lost her American citizenship.

Defendant's Proposed Instruction No. 144

If you find from the evidence that the defendant voluntarily renounced or abandoned or otherwise lost her American citizenship or nationality prior to or during the period specified in the indictment, commencing November 1, 1943, and ending August

14, 1945, you must acquit the defendant, because the overt acts charged in the indictment, even if committed by her, could not constitute the crime of treason against the United States, since her duty of allegiance ceased with termination of her American citizenship.

So if you should find from the evidence beyond a reasonable doubt that during the period specified in the indictment the defendant remained an American citizen owing allegiance to the United States, it would be your duty then to consider the second essential element of the charge as set forth in the indictment.

Modeled in instruction 11-L in *U. S. v. Kawakita*, Crim. No. 19,665, U.S.D.C., S.D. Cal., Cen. Div.

Defendant's Proposed Instruction No. 158

If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, the former should be adopted.

United States v. Haupt, 47 F. Supp. 836, 840.

(These instructions have been covered by the Court in other instructions. Defendant Excepts on the ground they have not been so covered.)

[Endorsed]: Filed October 6, 1949.

DEFENDANT'S PROPOSED INSTRUCTIONS

(These instructions have been refused by the Court as not correct statements of the law, not applicable to the evidence in this case, or already covered by other instructions. Defendant Excepts to their refusal.)

Defendant's Proposed Instruction No. 1

The evidence will not support a conviction upon the ground that the defendant committed the act alleged as overt act numbered one in the indictment.

State v. Logan, 344 Mo. 351, 122 ALR 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 2

The evidence will not support a conviction upon the ground that the defendant committed the act alleged as overt act numbered two in the indictment.

State v. Logan, 344 Mo. 351, 122 ALR 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 3

The evidence will not support a conviction upon the ground that the defendant committed the act alleged as overt act numbered three in the indictment.

State v. Logan, 344 Mo. 351, 122 ALR 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 4

The evidence will not support a conviction upon the ground that the defendant committed the act alleged as overt act numbered four in the indictment.

State v. Logan, 344 Mo. 351, 122 ALR 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 5

The evidence will not support a conviction upon the ground that the defendant committed the act alleged as overt act numbered five in the indictment.

State v. Logan, 344 Mo. 351, 122 ALR 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 6

The evidence will not support a conviction upon the ground that the defendant committed the act alleged as overt act numbered six in the indictment.

State v. Logan, 344 Mo. 351, 122 ALR 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 7

The evidence will not support a conviction upon the ground that the defendant committed the act alleged as overt act numbered seven in the indictment.

State v. Logan, 344 Mo. 351, 122 ALR 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 8

The evidence will not support a conviction upon the ground that the defendant committed the act alleged as overt act numbered eight in the indictment.

State v. Logan, 344 Mo. 351, ALR 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 30A

You cannot consider the defendant's admissions upon any of the issues of (1) citizenship (2) aid and comfort or (3) intention unless you first find that the Government has introduced other credible corroborative evidence on the same issue.

Pearlman v. U. S., 10 F (2d), 460, 461, 462 (CCA 9).

Goff v. U. S., 257 F. 294 (CCA 8).

Defendant's Proposed Instruction No. 38

The words "first brought," as used in Judicial Code, Section 41, upon which the venue in this Court is based, mean brought under lawful custody.

Defendant's Proposed Instruction No. 42

You are instructed that the so-called overt acts charged in the indictment are of the type which are allowed to be charged in conspiracy cases but that they do not constitute the type of overt acts contemplated by the constitutional definition of treason and, in consequence, you are instructed to return a verdict of acquittal in favor of the defendant.

Defendant's Proposed Instruction No. 44

Every act, movement, deed and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses.

Cramer v. United States, 325 U. S. 1, 34, 35.

Defendant's Proposed Instruction No. 45

Where the overt acts are single, continuous, and composite, made up of or proved by several circumstances and passing through several stages, it is necessary that there be two witnesses to each circumstance.

United States v. Haupt, 136 F. 2nd 661, 675.

United States v. Robinson, 259 F. 685.

Defendant's Proposed Instruction No. 46

If such an act is alleged as an overt act the entire chain of events of which it is one step must be established by the direct testimony of two witnesses.

State v. Logan, 344 Mo. 351, 122 ALR. 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 48

The defendant must be shown beyond a reasonable doubt to have given both aid and comfort by the overt acts alleged; it is not enough to show that the act gave comfort to the enemy if it did not also actually aid the enemy.

State v. Logan, 344 Mo. 351, 122 ALR. 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 49

The fact that the enemy may have believed that the defendant's commentaries would aid Japan or weaken the United States in the prosecution of the war is not conclusive evidence that they would have that effect.

State v. Logan, 344 Mo. 351, 122 ALR. 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 50

It is a necessary element in every overt act charged against the defendant that such alleged act should have actually given aid and comfort to the enemy. The elements of aid and comfort must be proven by two witnesses and beyond a reasonable doubt just as much as every other element of each overt act which is alleged.

Cramer v. U. S., 325, U. S. 1, 34-5, 89 L. Ed. 1441, 1461.

Haupt v. U. S., 330 U. S. 631, 635, 91 L. Ed. 1145, 1150.

Defendant's Proposed Instruction No. 52

An act which in itself gives the enemy no aid or comfort but is merely a step in a program which if and when completed may give the enemy aid and comfort is not such an overt act as must be alleged and proved to warrant a conviction of treason.

State v. Logan, 344 Mo. 351, 122 ALR. 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 60

There is no direct evidence that any of the alleged overt acts aided Japan or weakened the United States in the prosecution of the war.

State v. Logan, 344 Mo. 351, 122 ALR. 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 70

No one of the overt acts alleged in the indictment is in itself evidence of treasonable purpose and intent.

State v. Logan, 344 Mo. 351, 122 ALR. 417.

Weir v. Commr., 109 F. 2nd 996, 999.

Defendant's Proposed Instruction No. 74

There mere fact that a citizen of the United States resident in Japan rendered services to a Japan corporation and received compensation therefor does not establish that she is guilty of treason to the United States.

The Venus, 8 Cranch 253.

Defendant's Proposed Instruction No. 76

The fact that the defendant made records for broadcast by the Japan Radio Corporation to the United States while the two countries were at war, does not alone establish that she was guilty of treason.

The Venus, 8 Cranch 253.

Defendant's Proposed Instruction No. 83

If the jury find that the defendant's employment by the Japan Radio Corporation and by other agencies of the Japan government was employment for which only a Japan national was eligible, the defendant was expatriated and could not be guilty of treason.

United States v. Haupt, 136 F. 2nd 661, 675.

United States v. Robinson, 259 F. 685.

Defendant's Proposed Instruction No. 84

If the jury find that the defendant did not intend to expatriate herself although urged to do so by others, that fact may be considered by the jury as some evidence that she did not intend to betray the United States.

United States v. Haupt, 136 F. 2nd 661, 675.

United States v. Robinson, 259 F. 685.

Defendant's Proposed Instruction No. 88

Various alleged statements by the defendant as well as records of voice tests have been admitted into evidence for your consideration. Before you deal with these from any other standpoint you must first determine whether the defendant made each of these voluntarily and of her own free will not acting either under inducement or threats. If as to any you do not find that the Government has shown the statement to have been made voluntarily, then

you must discard any such alleged statement from your consideration of the case.

Bram v. U. S., 163 U. S. 532.

Defendant's Proposed Instruction No. 89

A phonographic recording of a short wave radio broadcast is the best evidence of the nature and contents of that recording. A witness's oral testimony of his recollection of what he heard as to the nature and contents of such a broadcast is but secondary evidence which, at best, is but a poor substitute for the phonographic recording itself. In consequence, you are instructed to view with caution or distrust any such testimony as to the nature and contents of a broadcast to which such a witness listened between 4 and 6 years ago.

Defendant's Proposed Instruction No. 105

You are instructed that the original radio script written by a person is the best evidence of its contents and that the present oral testimony of a witness as to its nature and contents four to six years since he read it is at best but a poor substitute for the original script itself and that the testimony of such a witness as to its contents is to be viewed with caution or distrust.

Defendant's Proposed Instruction No. 156

You are instructed that Title 10 U. S. Code, Sec. 15, provides as follows:

"It shall not be lawful to employ any part of the

Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and any person wilfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding \$10,000 or imprisonment not exceeding two years or by both such fine and imprisonment."

You are also instructed that neither the Constitution of the United States nor any act of Congress authorizes any part of the Army of the United States to arrest, detain or imprison the defendant in Japan or to transport her to the United States.

See 17 Opin. Attorney Gen. 71.

19 Opin. Attorney Gen. 293.

Defendant's Proposed Instruction No. 39

It is the duty of all prisoners of war to obey the laws, rules and regulations in force in the country where they are detained.

While held by the enemy, prisoners of war are not of course amenable to the discipline of their own officers, but they are subject to discipline and punishment by the detaining power for violations of any law, rule or regulation of the detaining power.

Given in instruction 11-O (2) in *U.S. v. Kawakita*, Crim. No. 19,665, U.S.D.C., S.D.Cal., Cen.Div.

Defendant's Proposed Instruction No. 106

Article VI, Clause 2 of the U. S. Constitution provides in part: "This Constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made under the authority of the United States shall be the supreme law of the land."

Defendant's Proposed Instruction No. 107

The Geneva Convention of 1929, to which the United States, Japan and other countries were parties, was and is a treaty made under the authority of the United States.

In re Yamashita, 327 U.S. 1, 23.

Defendant's Proposed Instruction No. 108

The provisions of the Geneva Convention between the United States and Japan remained in force at the outbreak of the war between the United States and Japan and throughout the duration of the war.

Cf. Clark v. Allen, 331 U.S. 503, 508.

Defendant's Proposed Instruction No. 109

Article 82 of the Geneva Convention provides as follows:

"The provisions of the present Convention must be respected by the High Contracting Parties under all circumstances.

"In case, in time of war, one of the belligerents is not a party to the Convention, its provisions shall

nevertheless remain in force as between the belligerents who are parties thereto.”

47 U. S. Stats. at L., pgs. 2021-2059.

Defendant's Proposed Instruction No. 112

If you find that the defendant was an American citizen at the outbreak of the war between the United States and Japan on December 8, 1941, and that she was in Japan at that time, then she was in contemplation of law a prisoner of war of Japan.

Rex v. Vine Street Police Station [1916] 1 KB 268.

Ludecke v. Watkins, 335 U.S. 160.

Defendant's Proposed Instruction No. 113

If you find that the defendant was an American citizen at the outbreak of the war between America and Japan on December 8, 1941, and that she was at that time in Japan, you are instructed that she had and continued to have the same rights as a prisoner of war.

Cf. Rex v. Vine St. Police Station [1916] 1 KB 268.

Defendant's Proposed Instruction No. 114

“Except as otherwise hereinafter indicated, every person captured or interned by a belligerent power because of the war is, during the period of such captivity or internment, a prisoner of war, and is

entitled to be recognized and treated as such under the laws of war.”

Art. 70 of War Department Publication
Basic Field Manual, Rules of Land Warfare FM 27-10 (1940).

Defendant's Proposed Instruction No. 115

Where the United States by treaty has consented that its military prisoners of war may do certain kinds of work while under the power of an enemy nation and American civilians are in the enemy country at the outbreak of war with the United States, the United States does not punish its civilian citizens for treason for doing exactly the same thing which it has permitted to its military prisoners.

Defendant's Proposed Instruction No. 116

Article 2 of the Geneva Convention provides in part:

“Prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them.”

47 U. S. Stats. at L., pgs. 2021-2031.

Defendant's Proposed Instruction No. 117

Article 45 of the Geneva Convention provides:

“Prisoners of war shall be subject to the laws, regulations, and orders in force in the armies of the detaining Power.

“An act of insubordination shall justify the adop-

tion towards them of the measures provided by such laws, regulations and orders.

“The provisions of the present chapter, however, are reserved.”

This reservation covers exceptions which I shall state to you in other instructions.

47 U.S. Stats. at L., 2021-2046.

Defendant's Proposed Instruction No. 118

Article 27 of the Geneva Convention provides in part:

“Belligerents may utilize the labor of able prisoners of war, according to their rank and aptitude, officers and persons of equivalent status excepted.”

47 U.S. Stats. at L., pgs. 2021-2040.

Defendant's Proposed Instruction No. 119

Except where otherwise provided by the terms of the Geneva Convention, the defendant while in Japan, was bound to obey the laws of Japan and the orders of Japanese officials both civil and military.

47 U.S. Stats. at L., 2021-2046 (Art. 45).

Defendant's Proposed Instruction No. 120

Article 31 of the Geneva Convention provides in part:

“Labor furnished by prisoners of war shall have no direct relation with war operations. It is especially prohibited to use prisoners for manufacturing

and transporting arms or munitions of any kind, or for transporting material intended for combatant units.”

47 U.S. Stats. at L., pgs. 2021-2041.

Defendant’s Proposed Instruction No. 121

Article 29 of the Geneva Convention provides:

“No prisoner of war may be employed at labors for which he is physically unfit.”

47 U.S. Stats. at L., pgs. 2021-2040.

Defendant’s Proposed Instruction No. 122

Article 28 of the Geneva Convention provides:

“The detaining Power shall assume entire responsibility for the maintenance, care, treatment and payment of wages of prisoners of war working for the account of private persons.”

47 U.S. Stats. at L., pgs. 2021-2040.

Defendant’s Proposed Instruction No. 123

Article 34 of the Geneva Convention provides in part:

“Prisoners of war shall not receive wages for work connected with the administration, management and maintenance of the camps.

“Prisoners utilized for other work shall be entitled to wages to be fixed by agreements between the belligerents.

“These agreements shall also specify the part which the camp administration may retain, the

amount which shall belong to the prisoner of war and the manner in which that amount shall be put at his disposal during the period of his captivity.

“While awaiting the conclusion of the said agreements, payment for labor of prisoners shall be settled according to the rules given below:

“a) Work done for the State shall be paid for in accordance with the rates in force for soldiers of the national army doing the same work, or, if none exists, according to a rate in harmony with the work performed.

“b) When the work is done for the account of other public administrations or for private persons, conditions shall be regulated by agreement with the military authority.”

47 U.S. Stats. at L., pgs. 2021-2042.

Defendant's Proposed Instruction No. 124

It was legal for defendant to receive pay from the Government of Japan or any of its agencies if you find that such was the fact. By the terms of the Geneva Convention with exceptions not material here, the Government of Japan was obliged to pay all American prisoners of war for work which they did while they were such prisoners.

Defendant's Proposed Instruction No. 125

The provisions of the Geneva Convention constitute a consent by the United States that its prisoners of war shall obey the orders of the opposite

belligerent power to the extent that they are not expressly forbidden by the terms of that convention.

Defendant's Proposed Instruction No. 126

As between the United States and its citizens, the provisions of the Geneva Convention legalize all acts done by American citizens in an enemy country which the terms of the Convention do not forbid.

Defendant's Proposed Instruction No. 127

The only work which the Government of Japan could not order American prisoners to do was work which has a direct relation with war operations, such as manufacturing or transporting arms or munitions. If you do not find beyond a reasonable doubt that the defendant performed work which had a direct relation with war operations, then you must find the defendant not guilty.

Defendant's Proposed Instruction No. 128

A person may do voluntarily anything which he or she may be legally ordered to do.

Defendant's Proposed Instruction No. 129

Prisoners of war do not have to decide at their peril whether work which they are ordered to do by the enemy belligerent has a direct or an indirect relation with war operations. If you do not find beyond a reasonable doubt that the defendant herself believed that the work she was doing had a

direct relation with war operations, then you must find her not guilty.

Defendant's Proposed Instruction No. 130

The defendant was not bound to distinguish at her peril as to whether work which she was ordered to do had a direct or an indirect relation with war operations. If any Japanese official, civil or military, in violation of the Geneva Convention ordered defendant to do work which had a direct relation with war operations, defendant was justified in obeying such order and her act in doing so would not be treason. If you entertain a reasonable doubt as to whether any act done by defendant, regardless of its nature, was done in obedience to the orders of any Japanese official then you must find her not guilty.

Defendant's Proposed Instruction No. 131

You are instructed that the work which the defendant did while she was a resident of Japan during the war was not such as had a direct relation with war operations. You must therefore find her not guilty.

Defendant's Proposed Instruction No. 132

Unless you find beyond a reasonable doubt that the defendant performed acts which are not permitted to prisoners of war by the terms of the Geneva Convention, then you must find her not guilty.

Defendant's Proposed Instruction No. 133

If the defendant did no more than play music which was intended to get listeners for other parts of a radio program which contained direct propaganda to the American troops, then the defendant did work which had only an indirect relation with war operations. Such work is permitted by the terms of the Geneva Convention and the defendant cannot be guilty of treason because of it.

Defendant's Proposed Instruction No. 134

If you entertain a reasonable doubt as to whether the defendant did any more than broadcast and introduce music which was to serve as a background for propaganda broadcasts, then the prosecution has not proven beyond a reasonable doubt that the defendant did work which has a direct relation with war operations. In this event you must find the defendant not guilty.

Defendant's Proposed Instruction No. 135

If you find that the defendant discussed her participation in a radio broadcast or the nature of a radio broadcast which she was to make and if you do not find beyond a reasonable doubt that said radio broadcast amounted to more than the announcements for a musical program and a musical program itself, intended to attract listeners' interest for other subjects of a broadcast, then you are instructed that the government has not proven beyond

a reasonable doubt that the defendant did any work which has a direct relation with war operations. If you entertain such reasonable doubt you must find the defendant not guilty.

Defendant's Proposed Instruction No. 136

If you find beyond a reasonable doubt that the defendant did prepare a radio script for subsequent broadcast but if you do not find beyond a reasonable doubt that said radio script was anything other than the introduction for music which was to be played to attract listener interest for other parts of a broadcast, then the government has not proved beyond a reasonable doubt that the defendant engaged in work which has a direct relation with war operations. If you entertain such a reasonable doubt you must find the defendant not guilty.

Defendant's Proposed Instruction No. 137

If any Japanese official, civil or military, in violation of the Geneva convention ordered defendant to do work which had a direct relation with war operations, and defendant believed that she would be killed, physically injured, beaten or the like if she disobeyed, then obedience to such order does not constitute treason.

Defendant's Proposed Instruction No. 138

If you find that defendant did any work which had a direct relation with war operations, but enter-

tain a reasonable doubt as to whether she was ordered to do so and believed she would suffer death, bodily injury, beating or the like if she disobeyed, then you must find the defendant not guilty.

Defendant's Proposed Instruction No. 77

If you find that the broadcasts made by defendant, whether innocent in character or otherwise, were made by her to aid, encourage or assist the U. S. and Allied prisoners of war who were forced to broadcast on the Zero Hour and other Japanese radio programs then she did not have any guilty intent to betray the U. S. and you must acquit her.

Defendant's Proposed Instruction No. 78

If you find that U. S. and Allied POWs were held under duress by the Japanese and that the defendant consented to become a radio announcer simply to aid, assist and encourage U. S. and Allied POWs to defeat the purposes or objectives to which the Japanese devoted them then her broadcasts, whatever their character may have been, were excusable because those POWs were acting under duress exerted upon them by the enemy, and the defendant, in aiding, assisting and encouraging those POWs was aiding and comforting the United States and its Allies and was injuring our enemy Japan.

Defendant's Proposed Instruction No. 79

If you find that the defendant, acting in good faith, became or was a radio broadcaster for the purpose of encouraging, assisting and bolstering up the spirits and morale of our U. S. and Allied POWs and what she did was designed towards that goal you must return a verdict of acquittal in her favor because in such an event she had no intent to commit any unlawful act against the United States.

Defendant's Proposed Instruction No. 85

Under the circumstances of this case, the defendant cannot be found to have had an intent to betray the United States if the motives for her acts was good and to aid the United States.

United States v. Haupt, 47 F. Supp. 836, 844.

Defendant's Proposed Instruction No. 90

If you find that one or more of the U. S. and Allied prisoners of war were responsible for the Japanese authorities selecting or ordering the defendant to become a radio announcer then you must return a verdict of acquittal in favor of the defendant because whatever she said or did in broadcasting, regardless of its character, was caused by those POWs who, as U. S. and Allied officers, were in actuality her superior officers and she was bound to aid and assist them the same as any subordinate officer or men serving in our armed forces who were under their immediate commands.

Defendant's Proposed Instruction No. 91

If you find that any U. S. or Allied POWs were directly or indirectly responsible for having the defendant selected to become a broadcaster and that they led her to believe and she did believe that in so doing she would be assisting them to defeat the purposes of the Japanese you must return a verdict of acquittal.

Defendant's Proposed Instruction No. 92

As to any overt act or acts charged in the indictment and submitted for your consideration which you may find to have been committed by the defendant, if you entertain a reasonable doubt whether the defendant did the act or acts willingly or voluntarily, or so acted only because performance of the duties of her employment required her to do so or because of other coercion or compulsion, you must acquit the defendant.

Modeled on instruction 11-U given in U. S.
v. Kawakita Criminal No. 19,665, U.S.D.C.,
Southern District of California, Central
Division.

Defendant's Proposed Instruction No. 93

If you find from the evidence that the defendant was compelled by the Japanese, that is to say, by order of the Japanese Imperial Army Headquarters or by order of Japanese civilian authority at Radio Tokyo, to become a radio broadcaster and that she had no choice but to obey such order or orders and

that, in so doing, she acted in fear that if she failed so to do her life would be imperiled or she would suffer grievous physical harm by the Japanese you must return a verdict acquitting her of the charges brought against her.

Defendant's Proposed Instruction No. 94

If you find from the evidence that the defendant believed and had good cause or reason to believe she was compelled to become an announcer by our enemies, the Japanese, you must acquit her.

Defendant's Proposed Instruction No. 95

If you find from the evidence that U. S. or Allied prisoners of war selected the defendant to become a broadcaster on the Zero Hour program at Radio Tokyo and she was ordered to become a broadcaster by our enemies, the Japanese, then her broadcasts, regardless of their character, were the broadcasts of the U. S. and Allied prisoners of war and, if those prisoners of war themselves were acting under duress, i.e., if they were forced by the Japanese to broadcast, then the defendant's acts are excusable, regardless of their character, because her broadcasts then, too, like those of those prisoners of war, were the products of coercion and compulsion by the enemy.

Defendant's Proposed Instruction No. 96

If you find that defendant did any of the acts charged in the indictment, but find that she was acting under fear of bodily injury, beating or the like if she refused, then you must find for the defendant on such act.

Defendant's Proposed Instruction No. 97

If you find that any act charged in the indictment was done by defendant in fear of death if she refused, then you must find for defendant as to such act.

Defendant's Proposed Instruction No. 98

If you find that the defendant did the acts charged in the indictment, but entertain a reasonable doubt as to whether or not she was acting under fear of bodily injury, beating or the like, then you must find the defendant not guilty.

Defendant's Proposed Instruction No. 99

If you find that the defendant did the acts charged in the indictment but entertain a reasonable doubt as to whether she was acting under fear of death when she did them, then you must find her not guilty.

Defendant's Proposed Instruction No. 100

If you find that any and all acts charged by the indictment were done by defendant under fear of

bodily injury, beating or the like if she refused, then you must find the defendant not guilty.

Defendant's Proposed Instruction No. 101

If you find that any and all acts charged by the indictment were done by defendant under fear of death if she refused, then you must find her not guilty.

Defendant's Proposed Instruction No. 102

If you find that defendant did any of the acts charged in the indictment, but entertain a reasonable doubt as to whether she was actually in fear of death if she refused, then you must find for the defendant on such act.

Defendant's Proposed Instruction No. 103

If you find that defendant did any of the acts charged in the indictment but entertain a reasonable doubt as to whether she was acting in fear of bodily injury, beating or the like if she refused, then you must find for the defendant on such act.

Defendant's Proposed Instruction No. 104

In reaching a verdict you must take into consideration that a young woman, such as this defendant was in 1943, would not be expected to have as much courage in the face of threats and danger from the enemy as would male soldiers and civilians or as much as ordinary prudent soldiers or civilians. You must expect that she would be more prone to fear

in the face of danger to herself than would a U. S. soldier or male civilian. If our POWs were held in duress and acting under fear and were intimidated into becoming broadcasters by the Japanese it is reasonable to presume that lesser factors of personal danger would induce or cause a young woman to be in great fear and to obey orders issued to her by the Japanese enemy.

Defendant's Proposed Instruction No. 139

If any threats were made to the defendant of death, bodily injury, beating or the like if she refused to obey orders given to her, it is immaterial whether such threats were communicated to her directly by Japanese officials or whether they were communicated to her by prisoners of war as coming from Japanese officials.

Defendant's Proposed Instruction No. 155

If you find that the defendant's guilt or innocence of the crime charged in this indictment has been previously passed upon by a competent tribunal either in her favor or against her, then you are instructed that she has been once in jeopardy and you must find her not guilty.

Defendant's Proposed Instruction No. 157

If you find that the defendant was arrested in Japan on or about October 17, 1945, and continuously thereafter was imprisoned in the Yokohama

Prison in Japan to on or about November 16, 1945, and thereafter was imprisoned in the Sugamo Prison in Japan to on or about October 26, 1946, by the United States or by authority of the United States you are instructed to return a verdict of acquittal against her because that punishment inflicted upon her by such authority constitutes either a prior conviction or a prior acquittal of the defendant by the United States and the Fifth Amendment of the Constitution forbids this indictment and trial because it subjects the defendant twice for the same alleged offense and puts her twice in jeopardy, in violation of the Fifth Amendment.

Defendant's Proposed Instruction No. 45-A

It is alleged in the indictment that the Broadcasting Corporation of Japan was controlled by the Imperial Japanese Government of Japan. Proof of this fact, if it be a fact, is an essential part of every one of the overt acts alleged in the indictment. Unless you find that the Government has proven beyond a reasonable doubt and with two witnesses that the Broadcasting Corporation of Japan was an agency of the Imperial Japanese Government under Japanese law at the time of the alleged overt acts you must find the defendant not guilty.

Defendant's Proposed Instruction No. 45-B

It is alleged in the indictment that the Broadcasting Corporation of Japan was controlled by the Imperial Japanese Government of Japan. Proof of

this fact, if it be a fact, is an essential part of every one of the overt acts alleged in the indictment. Unless you find that the Government has proven beyond a reasonable doubt that the Broadcasting Corporation of Japan was an agency of the Imperial Japanese Government under Japanese law at the time of the alleged overt acts you must find the defendant not guilty.

Defendant's Proposed Instruction No. 45-C

It is alleged in the indictment that the Broadcasting Corporation of Japan was controlled by the Imperial Japanese Government of Japan. Proof of this fact, if it be a fact, is an essential part of every one of the overt acts alleged in the indictment. You must find for the defendant upon each overt act as to which you are not convinced that the Government has proven beyond a reasonable doubt and with two witnesses that the Broadcasting Corporation of Japan was an agency of the Imperial Japanese Government under Japanese law at the time of the alleged overt act.

Defendant's Proposed Instruction No. 45-D

It is alleged in the indictment that the Broadcasting Corporation of Japan was controlled by the Imperial Japanese Government of Japan. Proof of this fact, if it be a fact, is an essential part of every one of the overt acts alleged in the indictment. You must find for the defendant upon each overt act as to which you are not convinced that the

Government has proven beyond a reasonable doubt that the Broadcasting Corporation of Japan was then an agency of the Imperial Japanese Government under Japanese law at the time of the alleged overt act.

Defendant's Proposed Instruction No. 161

Amendment VI to the United States Constitution provides in part as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial."

Defendant's Proposed Instruction No. 162

If you find that the defendant was not accorded a speedy trial by the United States, you must acquit her.

Amendment VI, U. S. Constitution.

Defendant's Proposed Instruction No. 163

If you find that the defendant was denied a speedy trial by the actions of the United States or its officers, you must acquit the defendant.

Amendment VI, U. S. Constitution.

Defendant's Proposed Instruction No. 164

If you have a reasonable doubt as to whether the defendant was accorded a speedy trial by the United States, you must acquit the defendant.

Amendment VI, U. S. Constitution.

Defendant's Proposed Instruction No. 165

If you find that the United States incarcerated the defendant for thirteen months or thereabouts without bringing charges against her, it deprived her of the constitutional right to a speedy trial, and you must acquit the defendant.

Defendant's Proposed Instruction No. 166

If you entertain a reasonable doubt as to whether the actions of the United States accorded or denied a speedy trial to defendant, and if you entertain a reasonable doubt as to whether all material evidence is now available which was available at the time of the defendant's first arrest in September of 1945, then you must acquit the defendant.

U. S. v. McWilliams, 163 Fed. (2d), 695, 696.

Defendant's Proposed Instruction No. 167

You are instructed that by incarcerating the defendant for 13 months in 1945 and 1946 without bringing charges against her, the United States deprived the defendant of her constitutional right to a speedy trial and you must acquit the defendant.

Defendant's Proposed Instruction No. 168

If you find that the defendant has been denied a speedy trial by the actions of the United States and that evidence material to the case has become lost or unavailable in the meantime then you must acquit the defendant.

U. S. v. McWilliams, 163 F 2d, 695, 696.

Defendant's Proposed Instruction No. 169

If the evidence is such that it raises a reasonable doubt in your minds as to whether the defendant was accorded a speedy trial or whether a speedy trial was denied her by the actions of the United States or its officers, then you must acquit the defendant.

Amendment VI, U. S. Constitution.

Receipt of a copy of the foregoing Defendant's Proposed Supplemental Instructions to Jury is hereby admitted this 25th day of August, 1949.

FRANK J. HENNESSY,

U. S. Attorney.

TOM DE WOLFE,

Special Assistant to the

Attorney General.

/s/ JAMES W. KNAPP,

/s/ TOM DE WOLFE,

Per J.W.K.,

Attorneys for Plaintiff.

Defendant's Proposed Instruction No. 142

If you find that the defendant at the time of her marriage to Philip d'Aquino, or at any other time, made a formal declaration of allegiance to the Republic of Portugal, then she lost her American citizenship as a result of such declaration.

Defendant's Proposed Instruction No. 143

Questions as to whether or not a person is an American citizen and his or her duty of allegiance as such are determined in accordance with the law of the United States. But whenever our laws incorporate by reference or adopt the laws of another country, the foreign law thus adopted is to be considered the same as if a part of the law of the United States. What the foreign law is—in this case the law of Portugal—is a question of fact to be determined by the jury from the evidence, the same as any other question of fact.

Defendant's Proposed Instruction No. 145

If you find that Philip d'Aquino was a citizen of Portugal at the time of defendant's marriage to him, then it is your duty to determine the law of Portugal as to the effect of such marriage on defendant's citizenship from the testimony which has been presented in court.

Defendant's Proposed Instruction No. 146

If you find that under the law of Portugal, defendant's marriage to Philip d'Aquino constituted naturalization into Portuguese citizenship, then the defendant lost her American citizenship as a result of said marriage.

Defendant's Proposed Instruction No. 147

If you find that under the law of Portugal, defendant's marriage to Philip d'Aquino constituted

a formal declaration of allegiance to the Republic of Portugal then the defendant lost her American citizenship as a result of said marriage.

Defendant's Proposed Instruction No. 148

If you find that defendant lost her American citizenship as a result of her marriage, you are instructed that she cannot be guilty of treason because of any overt act occurring after the date of said marriage, namely, April 19, 1945.

Defendant's Proposed Instruction No. 149

If defendant at any time made a formal declaration of allegiance to the Republic of Portugal, then she cannot be found guilty of treason to the United States for any act committed after the date of such formal declaration.

Defendant's Proposed Instruction No. 150

If you find that the defendant at any time acquired Portuguese citizenship and lost her American citizenship it is your duty to find her not guilty on all acts charged to have occurred at a date later than defendant's loss of her American citizenship.

Defendant's Proposed Instruction No. 151

If you find that the defendant is a citizen of Portugal you must find her not guilty.

Defendant's Proposed Instruction No. 152

If you find that the defendant was a Portuguese citizen during the times specified in the indictment, you must find her not guilty.

Defendant's Proposed Instruction No. 153

If you find that the defendant was a Portuguese national or citizen at the time she was arrested in Japan on or about August 26, 1948, by agents of the U. S. and that she thereafter was transported to the United States from Japan in September, 1949, by agents of the U. S., you must return a verdict of acquittal in her favor.

Defendant's Proposed Instruction No. 154

You are instructed that the uncontradicted evidence demonstrates that, by the law of Portugal, as well as by the law of the United States, the defendant lost her U. S. citizenship by virtue of the fact and at the very time she married her husband on April 19, 1945, in Tokyo, Japan, and that by that marriage which was registered at the Portuguese Consulate in Tokyo, Japan, in April or May, 1945, and also by the registration thereof thereafter at Lisbon, Portugal, she became exclusively a Portuguese national and citizen and since that time she has not been subject to process of the United States and she has not been subject to seizure in Japan by agents of the U. S. and she has not been subject to being brought here to be indicted in this cause.

Further, by the law of Portugal she became a Portuguese subject, an exclusive Portuguese national and citizen owing allegiance only to Portugal and not to the U. S. Further, by reason thereof she lost her U. S. nationality and from that time forth owed no allegiance to the U. S. and, since she was not a citizen of the U. S. on August 26, 1948, she was not properly subject to seizure and transportation to the U. S. to be indicted.

These instructions have been refused by the Court as not correct statements of the law, not applicable to the evidence in this case, or already covered by other instructions. Defendant excepts to their refusal.

[Endorsed]: Filed October 6, 1949.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 6th day of October, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

ORDER

(Minute order denying Motion for new trial, Motion for acquittal or new trial, and Motion in arrest of judgment. Sentence.)

This case came on regularly this day for judgment, motion for new trial, motion for acquittal or new trial, and a motion in arrest of judgment. The defendant was present in the custody of the United States Marshal and with her attorneys, Wayne Collins, Esq., Theodore Tamba, Esq., and George Ols-

hausen, Esq. Tom De Wolfe, Esq., and James Knapp, Esq., Special Assistants to the Attorney General, and Hon. Frank J. Hennessy, U. S. Attorney, were present on behalf of the United States. After hearing the arguments of Mr. Olshausen and Mr. De Wolfe, the above-mention motions were submitted to the Court for decision, and due consideration having been had thereon, it is Ordered that the Motion for a new trial, the Motion for acquittal or new trial, and the Motion in arrest of judgment be, and each of them, is hereby denied.

The defendant was called for judgment. After hearing Mr. Collins and Mr. De Wolfe, It Is Ordered that the defendant Iva Ikuko Toguri d'Aquino, for the offense of Treason Against the United States of which said defendant stands convicted by unanimous verdict of the jury, be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Ten (10) Years and pay a fine to the United States in the sum of Ten Thousand Dollars (\$10,000.00).

It Is Ordered that judgment be entered herein accordingly.

District Court of the United States for the Northern
District of California, Southern Division

No. 31712 R

UNITED STATES OF AMERICA

vs.

IVA IKUKO TOGURI D'AQUINO.

JUDGMENT AND COMMITMENT

On this 6th day of October, 1949, came the attorney for the government and the defendant appeared in person and with counsel;

It Is Adjudged that the defendant has been convicted upon her plea of not guilty and a verdict of guilty of the offense of Treason (Title 18 U.S.C., Section 1) as charged in the Indictment and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Ten (10) Years and pay a fine to the United States of America in the sum of Ten Thousand Dollars (\$10,000.00).

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the

United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ MICHAEL J. ROCHE,
United States District Judge.

/s/ J. P. WELSH,
Deputy Clerk.

Examined by:

/s/ TOM DE WOLFE,
Special Asst. to the U. S.
Attorney General.

Filed and entered this 6th day of October, 1949.

C. W. CALBREATH,
Clerk.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR ADMISSION OF
THE DEFENDANT TO BAIL PENDING
APPEAL

To the Plaintiff Above Named and to Frank J. Hennessy, U. S. Attorney, and to Tom De Wolfe, Special Assistant to the Attorney General, Its Attorneys:

You and each of you will please take notice that on Monday, October 10, 1949, at the hour of 10:00 a.m. or as soon thereafter as counsel can be heard in Room 338 of the Post Office Building at Seventh and Mission Streets, San Francisco, California, defendant will move the court for its order

admitting her to bail pending appeal. Said motion will be made upon the ground that since the imposition of a prison sentence for a term of years, this case does not now involve a possibility of capital punishment and that the appeal of defendant is taken in good faith and upon substantial grounds. This notice is based upon all of the records and files in this case, including particularly the transcript of the evidence and defendant's Motion for a New Trial Under Rule 33, Motion for Acquittal or New Trial Under Rule 29 (b), Motion for Arrest of Judgment Under Rule 34 and the Notice of Appeal filed concurrently with this Notice of Motion.

/s/ WAYNE M. COLLINS,

/s/ GEORGE OLSHAUSEN,

/s/ THEODORE TAMBA,

Attorneys for Defendant.

Points and Authorities:

Rules of Criminal Procedure 38 (b), 46 (a) (2); Rossi v. U. S., 11 Fed. (2d) 264; Hudson v. Parker, 156 U. S. 277, 286; Hanes v. U. S., 299 Fed. 296; McKnight v. U. S., 113 Fed. 45; U. S. v. Nardone, 106 Fed. (2d) 41; U. S. v. Motlow, 10 Fed. (2d) 657. Some of the above cases arose under the old rule substantially the same as the present rule. See old rule VI, paragraph 2, 292 U. S. 61, 78 L.Ed. 1512, 1514.

Receipt of Copy attached.

[Endorsed]: Filed October 7, 1949.

[Title of District Court and Cause.]

ORDER STAYING EXECUTION

Good cause appearing therefor, it is hereby ordered that the sentence and judgment imposed in the above-entitled case on October 6, 1949, be and the same is hereby stayed to and including October 17, 1949.

Dated: October 7, 1949.

/s/ MICHAEL J. ROCHE,
District Judge.

[Endorsed]: Filed October 7, 1949.

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Northern District of California,
City and County of San Francisco—ss.

Iva Ikuko Toguri d'Aquino, being first duly sworn, deposes and says: that she is the defendant in the above-entitled action; that she is an adult female, over the age of twenty-one years of age, a citizen of the United States of America by birth and so declared in the above-entitled proceeding to be a U. S. citizen, the party defendant in the above-entitled proceeding; that she is an indigent; that aside from used clothing and a few personal effects, the reasonable value of which does not exceed Twenty-Five (\$25.00) Dollars, she possesses the following assets only, viz: sundry household furniture, dishes, trunk, one sewing machine and utensils of the reasonable value of \$100.00 (One Hundred Dollars), said property being owned jointly with her husband, Philip d'Aquino, and the same being situated in Tokyo, Japan; that she does not possess any real property whatsoever save and except a remote claim or right, subservient to the right of the Attorney General as the Alien Property Custodian, in and to certain real property situated in Los Angeles County, California, described as follows:

Lots 42 and 57 of the South Gate Tract in the Rancho Tajauta, as per map recorded in

Book 13, Pages 14 and 15 of Maps in the office of the County Recorder of said County, and portion of the 538.28-acre tract of land allotted to Jose Maria Abila in the partition of Rancho Tajauta, Case Number 1200 of the 17th Judicial District Court in the County of Los Angeles.

Which said property she is informed and believes has an approximate market value of Three Thousand Five Hundred Dollars (\$3,500.00), the interest of the defendant therein, however, being at most a disputable claim and hence of substantially no value whatever to her.

That because of her said indigency and poverty, she is unable to pay the costs of the said action and the appeal from the judgment of conviction following the verdict and sentence of the court to ten years' imprisonment and to pay the \$10,000 fine or any portion thereof which was imposed upon her herein; that she believes she is entitled to the redress she seeks in her appeal from the said judgment of conviction of this court to the United States Court of Appeals for the Ninth Circuit; that the nature of said appeal is that said judgment should be reversed on all of the grounds heretofore enumerated in the following motions filed after the verdict: Motion for New Trial Under Rule 33, Motion for Arrest of Judgment Under Rule 34, and Motion for Acquittal or New Trial Under Rule 29 (b).

Wherefore affiant prays for the order of this Court waiving the costs and expenses aforesaid and directing that the costs of said appeal and the expense of certifying and preparing and printing the record on appeal herein be paid by the United States and that the same be paid when authorized by the Attorney General as provided by 28 U. S. C. 1915.

Dated: October 7, 1949.

/s/ IVA IKUKO TOGURI

d'AQUINO,

Affiant.

(Defendant and Appellant.)

Subscribed and sworn to before me this 7th day of October, 1949.

[Seal] /s/ ERNEST BESIG,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed October 7, 1949.

[Title of District Court and Cause.]

ORDER DISPENSING WITH PAYMENT OF
FEES AND COSTS OF PRINTING REC-
ORD ON APPEAL

Upon reading and filing the affidavit in forma pauperis of Iva Ikuko Toguri d'Aquino, defendant and appellant in the above-entitled cause,

It Is Hereby Ordered that said defendant and appellant may, without being required to prepay fees and costs or for the printing of the record on appeal herein, prosecute or defend to a conclusion her appeal to the appellate court or courts herein, and

It Is Hereby Ordered and Directed that the expense of printing the record on appeal herein be paid by the United States, and that the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

Dated: October 7, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed October 7, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

The defendant above-named hereby appeals to the United States Court of Appeals for the Ninth

Circuit from the judgment and sentence rendered in the above-entitled case on October 6, 1949, which judgment sentenced defendant to ten years in prison and imposed a fine of \$10,000. The defendant's present address is County Jail No. 3, Washington and Dunbar Streets, San Francisco, California. Defendant's attorneys are Wayne M. Collins, George Olshausen and Theodore Tamba, all of whom have as their address for the purposes of this case Room 1701 Mills Tower, 220 Bush Street, San Francisco, California. In addition, the latter two attorneys have general separate addresses as follows: George Olshausen, 280 Union Street, San Francisco 11, California; Theodore Tamba, 68 Post Street, San Francisco 4, California.

Defendant is now confined in San Francisco County Jail No. 3, the same address stated above.

The offense with which defendant is charged is violation of 18 U.S.C. 1, treason. Specifically, it is charged that during the war between the United States and Japan from 1941 to 1945, defendant gave radio broadcasts over Radio Tokyo on behalf of the Imperial Japanese Government.

/s/ WAYNE M. COLLINS,

/s/ GEORGE OLSHAUSEN,

/s/ THEODORE TAMBA,

Attorneys for Defendant.

[Endorsed]: Filed October 7, 1949.

District Court of the United States, Northern District of California, Southern Division

At A Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 10th day of October, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

MINUTE ORDER DENYING MOTION FOR BAIL PENDING APPEAL

This case came on regularly this day for hearing on motion for bail pending appeal. Defendant was present with her attorney, Geo. Olshausen, Esq. Hon. Frank J. Hennessy, United States Attorney, and Tom DeWolfe, Esq., Special Assistant to the Attorney General, were present for the United States. After hearing the arguments of Mr. Olshausen and Mr. DeWolfe, it is Ordered that said motion for bail pending appeal be denied.

RE EACH OF THE FOLLOWING
DEPOSITIONS

(Answers to questions to which objections were sustained are shown in parenthesis. Where part of an answer was read before objection, or before the court's ruling, this part is shown without parenthesis and later the full answer in parenthesis.)

In the Southern Division of the United States
District Court for the Northern District of
California

No. 31712 R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IVA IKUKO TOGURI D'AQUINO,

Defendant.

DEPOSITION OF GEORGE NODA

Deposition of George Noda, taken before me,
Thomas W. Ainsworth, Vice Consul of the United
States of America, in Mitsui Main Bank Building,
Room 335, in Tokyo, Japan, under the authority
of a certain stipulation for taking oral designations
abroad, and upon order of the United States Dis-
trict Court, made and entered March 22, 1949, in
the Matter of United States of America vs. Iva
Ikuko D'Aquino, pending in the Southern Division

of the United States District Court, for the Northern District of California, and at issue between the United States of America vs. Iva Ikuko Toguri D'Aquino.

The plaintiff appearing by Frank J. Hennessy, United States District Attorney; Thomas DeWolfe, Special Assistant to the Attorney General, and Noel Story, Special Assistant to the Attorney General, and the defendant, appearing by Wayne N. Collins and Theodore Tamba.

The said interrogations and answers of the witness thereto were taken stenographically by Irene Cullington and were then transcribed by her under my direction and the said transcription being thereafter read over correctly to said witness by me and then signed by said witness in my presence.

It is Stipulated that all objections of each of the parties hereto, including the objections to the form of the questions propounded to the witness and to the relevancy, materiality and competency thereof, and the defendant's objections to the use of the deposition, or any part of the deposition, by plaintiff, on the plaintiff's case in chief, shall be reserved to the time of trial in this cause.

GEORGE NODA

of Tokyo, Japan, an economic adviser to GHQ, SCAP, of lawful age, being by me first duly sworn, deposes and says:

Direct Examination

By Mr. Tamba:

Q. Mr. Noda, what is your full name?

A. My name is George Noda.

Q. Where do you reside, Mr. Noda?

A. My present address is c/o Mrs. Sekine, 88-3 Ikegami Tokumochi Ota-Ku, Tokyo-To.

Q. Are you married or single, Mr. Noda?

A. I am single.

Q. What is your business or occupation?

A. Presently I am employed by Price and Distribution Division, ESS, GHQ, SCAP, in the capacity of economic advisor.

Q. And you are a citizen and national of what country?

A. I am a citizen and national of Japan.

Q. Were you ever employed by Radio Tokyo?

A. I was.

Q. When were you employed there?

A. From December, 1942, through September, 1943. My job was officially terminated because of my entry into Kyushu Imperial University. However, I returned from my trip to Kyushu, I believe

(Deposition of George Noda.)

in October, and I spent the month of [2*] November in and around Tokyo and I spent most of the time at Radio Tokyo.

Q. You were in and about the studio in the month of October, 1943?

A. I believe more in November.

Q. Were you there during the month of December, 1943? A. No, I wasn't.

Q. Do you know the defendant, Iva D'Aquino.

A. I do.

Q. When did you first meet her?

A. I met her some time before she started working for Radio Tokyo.

Q. Did you see her in and about the premises known as Radio Tokyo? A. Yes.

Q. When did you see her?

A. Before she started working she used to come up every so often to visit friends and then I saw her in November, 1943.

Q. Did you ever see her occupied as a typist?

A. No, but I heard she had been during my trip down to Kyushu.

Q. Were you familiar with the program known as the "Zero Hour."

A. When I was working there it was a very short program, about 15 minutes.

Q. Who were the personnel on the program at that time?

* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Deposition of George Noda.)

A. Mr. Norman Reyes and/or Mr. Ted Wallace Ince.

Q. Anyone else? A. At that time, no.

Q. Now do you recall about the time she started on the program, you say it was November, 1943, is that correct?

A. It must have been, because she wasn't working on that program when I left in September.

Q. Now, what part did she take on the program, if you know?

A. She was introducing records. [3]

Q. How was she introducing these records, was it from prepared script?

A. I saw her reading from script.

Q. Do you know who prepared that script for her?

A. I didn't ask her; I don't remember asking, but from my knowledge of the operations of Radio Tokyo at that time, I think I would be quite correct in saying that it was either Mr. Norman Reyes, Mr. Wallace Ince or Mr. Cousens.

Q. Do you know of your own knowledge that either Cousens, Ince or Reyes prepared script for that program?

A. Yes, I do.

Q. You say you saw Mrs. D'Aquino broadcast, is that correct?

A. Yes.

Q. Will you tell us what kind of broadcasting she did; describe her to us.

A. My opinion as to her ability as an announcer is that she was very poor. I was very surprised

(Deposition of George Noda.)

that anybody had qualified her for that position; her voice was deep and cracked; her speech jerky.

Q. Was she fluent? A. No.

Q. That is the kind of broadcasting you heard while you were there? A. That is right.

Q. Were there any other woman broadcasters while you were there?

A. Yes, Miss June Suyama; Miss Ruth Hayakawa, and every so often Katherine Morooka.

Q. Any others that you can recall at this time?

A. No.

Q. Of the three girls that you mention, which of the three took part in the "Zero Hour" program?

A. I think, Miss Morooka. [4]

Q. What part did Ruth Hayakawa take in the Zero Hour program?

A. I don't remember her having any part in the "Zero Hour" program.

Q. How about June Suyama?

A. I don't think she had any part.

Q. What did she do?

A. Miss Suyama was, at that time, one of the best announcers in Radio Tokyo. She handled news broadcasts; sometimes read commentaries. She worked mostly from 8 to 5.

Q. Where is she, if you know, at the present time?

A. Miss Suyama, I heard, was killed by a truck.

Q. Now do you know of any PWs being slapped

(Deposition of George Noda.)

by any army officer around Radio Tokyo while you were there?

Mr. DeWolfe: Object to that as incompetent, irrelevant and immaterial, too remote.

The Court: Read it again please.

(Question reread by Mr. Collins.)

The Court: I will allow it. The objection is overruled.

A. It was common knowledge in Radio Tokyo that when Major Cousens was first brought in to Radio Tokyo, by, I believe, Japanese officer named Major Muto, and he refused to follow instructions given by Major Muto, that he was slapped and humiliated.

The Court: Let that question and answer go out and let the jury disregard it for any purposes of this case.

Q. What time of the day did the Zero Hour come on, Mr. Noda? A. It was from 6 to 7.

Q. You left the radio station and went into the army, is that correct?

A. In September when I resigned, I resigned because I had been permitted entry into Kyushu Imperial University. I had to go down to Kyushu to continue my studies. About a month after I got down there, I was informed that I was being drafted into the Japanese Army and I had to return in October to take my physical examination.

Q. You told us that before. While you were in

(Deposition of George Noda.)

the Japanese Army, where were you stationed?

A. I was in Japan.

Q. Let me ask you. Can you tell us when the air raids commenced [5] in this area, if you recall, the month and year?

A. The air raids started around February, 1945, and grew worse and worse through March and April. Some of the specific dates I remember are March 9, April 14 and 15.

Q. You have appeared voluntarily as a witness for this defendant? A. I have.

Q. Have you been interviewed by anyone else other than me about this case?

A. No. I was interviewed by CIC.

Q. When was that?

A. That was in late 1945.

Q. I think that is all.

Cross-Examination

By Mr. Story:

Q. Where were you born?

A. I was born in Victoria, B. C., Canada.

Q. Did you ever live in the United States?

A. No.

Q. Were you ever in the United States?

A. Yes.

Q. For how long?

A. About four hours. I took one of those short trips to Seattle and returned the same day.

Q. How many times did you see Miss Toguri at the microphone broadcasting at Radio Tokyo?

(Deposition of George Noda.)

A. About three times.

Q. You mentioned a moment ago that you had been interviewed by the CIC? A. Yes.

Q. When was that? A. Late in 1945.

Q. Did you sign a statement?

A. I don't remember. [6]

Q. Do you recall at the time you were interviewed by the CIC that you told them you saw Miss Toguri at the microphone only one time and that you did not know whether it was a voice test or broadcast.

A. I am sorry; I don't have any recollection of the statements I made; whether I signed any statement or not. All I remember is that I spoke to a CIC agent about Miss Toguri.

Q. Then you don't really know how many times you did see Miss Toguri at the radio station?

A. I do know it was more than once.

Q. Was she broadcasting or making a voice test?

A. I know definitely on one occasion she was broadcasting.

Q. Then the statement you made to the CIC is not a true statement?

A. I don't know what statement I made——

Mr. Collins: Just a moment, Mr. Tamba. I object to that as examining something not in evidence, and on the further ground that no foundation has been laid and the further ground that it is argumentative and the further ground——

(Deposition of George Noda.)

The Court: The objection is sustained; proceed.

(A. I don't know what statement I made to the CIC.)

Q. What were you doing when you came back from the University to Tokyo?

A. I was visiting. Well, actually, I was spending my last month as a civilian and trying to enjoy myself.

Q. Had you resigned from the University at that time?

A. No, there wasn't a definite resignation, or whatever you wish to call it, but they had a system whereby everybody who was drafted, and most college students were at that time, was put on temporary leave, let us say, for the duration.

Q. In other words, you are telling us that you left here in September to enroll in the University?

A. That is right.

Q. That you enrolled in the University in September and came back to Tokyo and stayed here during the months of October and November?

A. I believe I said I came back in October and that it was November that I actually spent in Tokyo.

Q. When were you drafted?

A. I was drafted on December 1.

Q. Of your own knowledge, do you know who prepared the scripts that you saw Miss Toguri read at the radio station?

A. I did not see who did it.

(Deposition of George Noda.)

Q. So you don't know of your own knowledge who wrote the scripts?

A. I don't know, yes. I have seen, with my own eyes, Norman Reyes, Ted Wallace, and Cousens prepare scripts. I don't know definitely whether they prepared the scripts used by Miss Toguri.

(Q. Were you present when prisoners of war working at the radio station were mistreated?

A. No, I wasn't.)

Q. Then of your own knowledge you do not know——

Mr. Collins: I ask that that might be stricken out as calling for the opinion and conclusion of the witness and the further ground that no foundation has been laid, and on the further ground that it was improper cross-examination, and Your Honor has made a ruling on the prior question covering that.

The Court: Read the question Mr. Reporter.

Mr. DeWolfe: Excuse me, Your Honor, maybe we can obviate it. I think his objection is proper. The direct examination was excluded on that same point.

The Court: The objection will be sustained.

Mr. DeWolfe: I will confess the propriety of the objection. And the next question and answer, with the consent of counsel, may likewise be deleted, because it deals with the same point.

The Court: So stipulated?

Mr. Collins: No, you may——?

(Deposition of George Noda.)

Mr. DeWolfe: Starting at line 12, "Then, of your own knowledge——?"

Mr. Collins: No, I can't, because I don't think that was stricken out. This is as to the voice test.

(Conversation between Messrs. DeWolfe and Collins out of hearing of reporter.)

Mr. DeWolfe: Right here (Indicating).

Mr. Collins: Oh yes, that goes out, that is from line 9 to and including line 14; it may go out.

The Court: Very well, it may go out. Let the record so show.

Mr. Collins: Page 8.

(Q. Then, of your own knowledge, you don't know if anybody was mistreated? A. No.)

Mr. Tamba: Mr. Noda, do you recall that I asked you yesterday whether Mrs. D'Aquino was taking a voice test with Major Cousens, Lt. Norman Reyes and you being present in the room at that time.

A. I can't remember anything distinctly as to a voice test for Miss Toguri.

Q. But you remember her speaking over the Microphone? A. Yes.

Q. How old are you, Mr. Noda?

A. I am 26 years old.

Q. When did you come to Japan from Canada?

A. In the summer of 1936.

Q. What was your age at that time?

A. Thirteen.

(Deposition of George Noda.)

Q. And you have remained here ever since?

A. Yes. [8]

/s/ GEORGE NODA.

Japan,

City of Tokyo,

American Consular Service—ss:

I do solemnly swear that I will truly and impartially take down in notes and faithfully transcribe the testimony of George Noda, a witness now to be examined. So help me God.

/s/ IRENE CULLINGTON.

Subscribed and sworn to before me this fifteenth day of April A.D. 1949.

/s/ THOMAS W. AINSWORTH,

Vice Consul of the United
States of America.

[American Consular Service Seal.]

Service No. 566a; Tariff No. 38; No fee prescribed.

Japan,

City of Tokyo,

American Consular Service—ss:

CERTIFICATE

I, Thomas W. Ainsworth, Vice Consul of the United States of America in and for Tokyo, Japan, duly commissioned and qualified, acting under the authority of a certain stipulation for taking oral

designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the Matter of United States of America, Plaintiff, vs. Iva Ikuko Toguri D'Aquino, Defendant, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between United States of America vs. Iva Ikuko Toguri D'Aquino, do hereby certify that in pursuance of the aforesaid stipulation and court order and at the request of Theodore Tamba, counsel for the defendant Iva Ikuko Toguri D'Aquino I examined George Noda, at my office in Room 335, Mitsui Main Bank Building, Tokyo, Japan, on the fifteenth day of April, A.D. 1949, and that the said witness being to me personally known and known to me to be the same person named and described in the interrogatories, being by me first sworn to testify the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories in the cause in which the aforesaid stipulation, court order, and request for deposition issued, his evidence was taken down and transcribed under my direction by Irene Cullington, a stenographer who was by me first duly sworn truly and impartially to take down in notes and faithfully transcribe the testimony of the said witness George Noda, and after having been read over and corrected by him, was subscribed by him in my presence; and I further certify that I am not counsel or kin to any of the parties to this cause or in any manner interested in the result thereof.

In witness whereof, I have hereunto set my hand and seal of office at Tokyo, Japan, this 30th day of April, A.D. 1949.

/s/ THOMAS W. AINSWORTH,
Vice Consul of the United
States of America.

[American Consular Service Seal]

Service No. 707; Tariff No. 38; No fee prescribed.

[Endorsed]: Filed May 5, 1949.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 31712 R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IVA IKUKO TOGURI D'AQUINO,

Defendant.

DEPOSITION OF LILY GHEVENIAN

Deposition of Lily Ghevenian, taken before me, Thomas W. Ainsworth, Vice Consul of the United States of America, in Mitsui Main Bank Building, Room 335, in Tokyo, Japan, under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States Dis-

trict Court, made and entered March 22, 1949, in the matter of United States of America vs. Iva Ikuko Toguri D'Aquino, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between the United States of America vs. Iva Ikuko Toguri D'Aquino.

The plaintiff appearing by Frank J. Hennessey, United States District Attorney; Thomas DeWolfe, Special Assistant to the Attorney General, and Noel Story, Special Assistant to the Attorney General, and the defendant, appearing by Wayne N. Collins and Theodore Tamba.

The said interrogations and answers of the witness thereto were taken stenographically by Marion A. Peterson and were then transcribed by her under my direction, and the said transcript being thereafter read over correctly to said witness by me was then signed by said witness in my presence.

It is stipulated that all objections of each of the parties hereto, including the objections to the form of the questions propounded to the witness and to the relevancy, materiality and competency thereof, and the defendant's objections to the use of the deposition or any part of the deposition, by plaintiff, on the plaintiff's case in chief, shall be reserved to the time of trial in this cause.

LILY GHEVENIAN

of Tokyo, Japan, employed at GHQ, SCAP, of lawful age, being by me first duly sworn, deposes and says:

Questions propounded by Mr. Tamba:

Q. Your name is Lily Ghevenian?

A. Yes.

Q. Were you ever known by any other name?

A. Yes; Lily Sagoyan.

Q. Where do you reside? A. In Tokyo.

Q. How long have you resided in Tokyo?

A. I was born here.

Q. What is your nationality?

A. Stateless.

Q. Will you explain?

A. My father was Armenian and my mother was Japanese.

Q. Where and with whom are you employed?

A. GHQ, in Tokyo.

Q. Do you know Iva Toguri, also known as Iva D'Aquino? A. Yes.

Q. And when did you first meet her?

A. The latter part of 1943.

Q. Were you ever employed by Radio Tokyo?

A. Yes.

Q. Over what period of time did that employment continue?

A. From latter 1943 until September, 1945.

Q. What were your duties at Radio Tokyo?

A. Typist.

(Deposition of Lily Ghevenian.)

Q. Did you work steadily from 1943? [2*]

A. Yes.

Q. What were your hours per day?

A. Every other day from 8 to 5; night shift from 12 noon to 8 p.m.

Q. How many days per week?

A. Five and one-half days per week.

Q. Was Miss Toguri employed by Radio Tokyo?

A. Yes, she was.

Q. What work did she do when she first started there?

A. She was there before I was; when I came, she was broadcasting.

Q. Was Miss Toguri ever employed as a typist?

A. I don't know.

Q. Did you know what her hours of employment were?

A. Early in the evening; she went home right after the broadcast.

Q. Did you have occasion to type any scripts for her? A. I did.

Q. Do you know who prepared that script for her? A. I don't know.

Q. Who brought the script to you to be typed?

A. Ken Oki or Miss Toguri.

Q. What program did Miss Toguri broadcast?

A. The Zero Hour.

Q. Do you know how many days a week Miss Toguri worked at the radio station?

* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Deposition of Lily Ghevenian.)

A. She was sick quite a while; she was supposed to have worked six days a week.

Q. Do you recall when Miss Toguri was sick, approximately? If you don't know, say so.

A. I don't know the exact date, but she was away a long time when Cousens was away.

Q. Do you remember when Cousens was away?

A. No, I don't.

Q. How long would these absences be, a week, or two, or three? A. It was weeks. [3]

Q. Now, when this script was delivered to you for Miss Toguri's program, how was it prepared?

A. It was typewritten.

Q. What kind of paper was it on?

A. Tissue paper—onion skin sheets.

Q. Then what would you do with this?

A. I made six or seven copies to be distributed.

Q. Do you know what became of the original?

A. Either Miss Toguri or Ken Oki took it back.

Q. Did you ever see the original of that script again? A. No, I never did.

Q. And you have testified that you did not know who prepared the script? A. Yes.

Q. When was that script brought to you?

A. About anywhere between 5 and 6 p.m.; sometimes Miss Toguri brought them in at the last minute.

Q. Do you know when the Zero Hour was broadcast? A. It was 6 p.m.

(Deposition of Lily Ghevenian.)

Q. Was the script brought to you before the broadcast?

A. A few times it was brought in afterwards.

Q. How long was that Zero Hour program?

A. I think it was from 6 to 6:30.

Q. Did you ever listen to the Zero Hour program? A. Yes, I did.

Q. Did you ever listen to Mrs. D'Aquino broadcast? A. Yes, I did.

Q. What did she broadcast, if you remember?

A. She broadcasted music introductions.

Q. Did you ever hear Mrs. D'Aquino discuss the nature or the quality of that program with anyone? A. I do not know.

Q. Did you ever hear Mrs. D'Aquino broadcast a motion picture involving war? [4]

A. I do not remember.

Q. Did you ever hear Mrs. D'Aquino speak or broadcast into a microphone, referring to the enemies of Japan? A. No, I haven't.

Q. Did you ever see her prepare a script regarding the loss of ships? A. No, I haven't.

Q. Did you ever hear her broadcast anything regarding the high cost of living in the United States? A. No, I have not.

Q. Or anything regarding soldiers in the South Pacific suffering from jungle rot and malaria?

A. Not that I remember.

Q. Did you ever hear her broadcast anything about the unfaithfulness of wives left at home?

(Deposition of Lily Ghevenian.)

A. No, I did not hear it.

Q. Or prostitution existing in the United States, in the factory areas of the United States?

A. No, I did not hear that.

Q. Miss Ghevenian, do you remember an occasion on the Zero Hour program when the program was interrupted for a flash news item, regarding the fall of Saipan?

A. Not the exact date, but I remember such an incident.

Q. What happened?

A. They broadcast "Stars and Stripes Forever."

Q. What happened around the radio station after that?

A. Everyone made a fuss about that and naturally didn't like it.

Q. Do you know what the Kempeitai was during the war? A. Yes, I do.

Q. What was the Kempeitai?

A. They were the gendarmes.

Q. Did you ever suspect that you were being watched by the Kempeitai? A. Yes. [5]

Q. Were you ever apprehended by the Kempeitai? A. No, I have not.

Q. I mean outside of the radio station?

A. I was caught in Yokohama once.

Q. Under what circumstances were you caught?

A. I did not have a pass to go there.

Q. Were you detained by the Kempeitai on that occasion? A. Just for about five minutes.

(Deposition of Lily Ghevenian.)

Q. Then you were released? A. Yes.

Q. Whom did you suspect might be Kempeitai agents in Radio Tokyo?

Mr. DeWolfe: Objection to that as incompetent, irrelevant and immaterial, calling for the conclusion.

The Court: The objection will be sustained.

(A. Buddy Uno and Ruth Hayakawa, and some other people I don't know their names.)

Q. Were you conscious of the fact that you were being watched? A. Yes, I was.

Q. Did you ever have a discussion with Iva D'Aquino, regarding Kempeitai's following you or her or both of you?

A. I remember once telling her I was watched by the Kempeitai.

Q. What did she say to you?

A. I don't remember.

Q. Who was on the Zero Hour program—I mean, what was the cast, if you know?

A. Ken Oki, Norman Reyes and Iva Toguri, and Charles Cousens, and I don't remember the rest.

Q. Do you remember any other girls on the program, besides Miss Toguri?

A. In the last part—toward the end of the war, Mrs. Oki, or Mieko Furuya—she used to take her parts when Iva was not there.

Q. Do you know of any other girls who might have taken Iva's parts? A. I do not.

Q. Do you know Mary Ishii?

A. I know Mary.

(Deposition of Lily Ghevenian.)

Q. Was she on that program?

A. I don't know. [6]

Q. What did Mr. Nakamoto do on the program?

A. I think he was in charge of the program.

Q. What did Mr. Oki do on the program?

A. He broadcasted news.

Q. Miss Ghevenian, you've heard me mention certain things regarding the broadcast of loss of ships, malaria, high cost of living, prostitution, etc.—did any of the scripts handed to you by Miss Toguri contain any reference to such things?

A. No.

Q. Are you sure of that? A. Yes.

Q. Why?

A. Because if there was such an item in it, I would have discussed it with another typist.

Q. Who was that typist?

A. Mary Higuchi.

Q. Did you ever have any discussion with Mrs. Oki during the times she substituted for Miss Toguri? A. That's right.

Q. How did she act?

A. She acted very proud of the fact that she was substituting for Miss Toguri.

Q. Miss Ghevenian, did Iva D'Aquino ever discuss the war with you, or the outcome of the war?

A. Yes, she has.

Q. What did she say on those occasions?

A. She used to tell me America would never lose. She said if you watch American boys play-

(Deposition of Lily Ghevenian.)

ing footabll, you know that they'll fight to the last man.

The Court: We will now take a recess until two o'clock. The jurors may be excused.

(Thereupon a recess was taken until 2 p.m. this day.)

Q. In any of her discussions with you, was she pro-Japanese? A. No, she was not.

Q. Did she ever express her feelings regarding the Japanese? [7]

A. She did not like them.

Mr. DeWolfe: I move to strike that as not responsive.

The Court: Let it go out and let the jury disregard it.

Q. Did you ever know of occasions when Miss Toguri took food to Prisoners of War?

A. I did not know it at that time, but I learned afterwards.

Q. What did she do in order to get the food there?

Mr. DeWolfe: I object to that as hearsay, sir, because of the last answer. The answer before that question was: "I did not know it at that time but I learned afterwards."

The Court: Submitted?

Mr. Collins: Yes.

The Court: The objection is sustained.

Mr. Collins: The prior question, if your honor

(Deposition of Lily Ghevenian.)

please, related to "Did she ever express her feelings?", and the answer that was stricken was, "She did not like them." This question is, "Did you ever know of occasions when Miss Toguri took food to prisoners of war?" "Answer: I did not know it at the time, but I learned afterwards."

The Court: What she learned afterwards is hearsay.

"Q. Where did you learn that?"

"A. From Ruth Hayakawa."

Mr. DeWolfe: I object to that as hearsay, in the same manner.

The Court: Let it go out and let the jury disregard it.

(A. She had to escape from the Kempeitai.)

Q. Where did you learn that?

A. From Ruth Hayakawa.

Q. Do you know a man by the name of Ken Oki?

A. Yes.

Q. Did you ever have a discussion with Mr. Oki after his return from the United States, where he was supposed to have testified against Miss Toguri before a United States Grand Jury?

A. Yes, I have talked to him afterwards.

Q. What was said to you by him on those occasions?

A. He said he had a "good time" and "Why don't you have a free ride to the United States too?"

Q. What did you say to him?

(Deposition of Lily Ghevenian.)

A. I said I do not want to go on a free ride.

Q. Miss Ghevenian, were there other girls, who broadcast on other programs while you were there?

A. Yes.

Q. Do you recall the names of any of those girls?

A. June Suyama, Ruth Hayakawa, Kathleen Fujiwara and Mrs. Oki.

Q. Do you remember a girl, who used to broadcast on the German Hour program?

A. Yes, I do.

Q. Who was she? A. Yoneko Matsunaga.

Q. Where is that girl today?

A. The last I heard, she was in New Jersey.

Q. What has become of June Suyama?

A. I recently heard she was killed in a car accident. [8]

Q. Do you know when the German Hour program was broadcast?

A. It was right after the Prisoners' Hour.

Q. Did this girl resemble Miss Toguri in stature or features? A. I do not know.

Cross-Examination

By Mr. Story:

Q. These scripts that you typed for Miss Toguri—how did they come to you; were they typed or handwritten?

A. Always typewritten.

Q. Did Miss Toguri ever tell you that she wrote some of her scripts? A. No, she never did.

(Deposition of Lily Ghevenian.)

Q. When did Mr. Cousens leave the radio station?
A. I do not know.

Q. Will you give us your best recollection—was it in 1943, 1944 or 1945?

A. I believe it was around 1944.

Q. Now, approximately when in 1944?

A. I do not remember.

Q. Now, you mentioned that Miss Toguri was away from the radio station for some weeks. Was this the only time she was away for any extended time?
A. No, she was away another time.

Q. When was Miss Toguri away the first time you mentioned?

A. That was when Cousens was away in the hospital.

Q. Could that have been in the Spring of 1945?

A. I don't remember.

Q. Now, the other time that you referred to when Miss Toguri was away from the station—how long was she away from the station?

A. Approximately three weeks.

Q. Can you give us the date of that absence?

A. I cannot, but that was the time she got married.

Q. Where was your office located with reference to the broadcasting studio?

A. The broadcasting studio was on the first floor and I believe it was the third floor where we were.

Q. Did you have any official duties at all on the first floor? [9]
A. No.

(Deposition of Lily Ghevenian.)

Q. Then it is quite possible that Miss Toguri could have been there all the time?

A. On those occasions, it was usually somebody else broadcasting. I know, because the voice that came through the monitor was not hers.

Q. Was there a monitor—speaker—in your office?

A. Yes, there was. There was one all over the building.

Q. Was this speaker on on times when the Zero Hour was being broadcast?

A. It was on all day and night.

Q. Did this noise disturb the girls in the typing pool?

A. No, it didn't—it wasn't on so loud.

Q. You have testified that during the time you worked at the radio station, one day you would work from 8 to 5 in the afternoon and on the other day you would work from 12 noon to 8 p.m. Was this year schedule all the time you worked at the station?

A. We took the afternoon shift every other day and on Sundays we took turns.

Q. Did you have any official capacity in monitoring the program?

A. No, I did not.

Q. You testified that Miss Toguri was ill and away from the station after Major Cousens left—you have testified, for some weeks—approximately how many weeks? Could it have been two weeks?

A. I don't know.

(Deposition of Lily Ghevenian.)

Q. Could you give us your best recollection as to how long it was?

A. I should say about a month and a half.

Q. Were you ever actually present in the radio studio, when the Zero Hour program was being broadcast?

A. No, I have never seen Zero Hour being broadcast.

Q. Then, so far as you know, your only knowledge of the Zero Hour and the people who participated in it were the voices through the monitor?

A. That's right.

Q. Did any other typists in the typing pool ever type a script for the Zero Hour? [10]

A. Yes.

Q. What other typists typed the Zero Hour program scripts at times?

A. Anyone who had the time or who was free did them—or who didn't have a definite assignment to type for one person.

Q. Approximately what percentage of the scripts did you type for the Zero Hour, ten per cent, fifteen per cent?

A. Just a very few.

Q. You made reference in you direct testimony to the playing of the Stars and Stripes Forever after the fall of Saipan. Was Miss Toguri responsible for the playing of Stars and Stripes Forever at that time?

A. I do not know that.

Q. Do you know who played Stars and Stripes Forever?

(Deposition of Lily Ghevenian.)

A. George Ozasa.

Q. In your direct examination you said—"Just a minute. I think the next questions on cross-examination relate to direct examination that was not allowed to be read.

The Court: It is stipulated it may be deleted.

Mr. DeWolfe: There is quite a bit of it. The next two items went out on direct examination and we are trying to enter into an agreement as to what portion of this we will skip as being pertinent to the part that was not read on direct examination.

The Court: Proceed, I will rule.

Mr. DeWolfe: I want to skip to page 12, line 5 because the matters in between that and what I last read concern a question on direct examination that was not read.

Mr. Collins: From line 14, page 11, down to and including line 4 on page 12.

The Court: It may go out.

Mr. DeWolfe: Yes, sir.

The Court: So stipulated.

Mr. Collins: I am not consenting that it go out. I am simply not opposing the objection made to that by Mr. DeWolfe on the ground that it is not proper cross-examination.

Mr. DeWolfe: I do not press that cross-examination because it related to matters objected to which was sustained on direct examination. Therefore I don't think it is necessary to read it. I ask that it go out of the record.

(Deposition of Lily Ghevenian.)

The Court: So stipulated?

Mr. Collins: I do not stipulate, if Your Honor please. I mean after objection is made I think Your Honor did make such a ruling.

The Court: Proceed.

(Q. In your direct examination, you said you suspected Mr. Uno of being a Kempeitai agent. Do you know definitely whether he was a Kempeitai agent? A. No.

Q. In your direct examination, you said you suspected Ruth Hayakawa of being a Kempeitai agent. Do you know definitely whether she was a Kempeitai agent?

A. I have learned since that she was not.

Q. Have you heard since that Mr. Uno was not?

A. Yes, I have heard he was not a Kempeitai.

Q. In other words, you had no reason to be frightened of those persons?

A. Mr. Uno used to wear a uniform around the station.

Q. Was this uniform a uniform of the Kempeitai?

A. The Kempeitai had the same uniform as the ordinary soldier did.

Q. Was that the type that Mr. Uno was wearing? A. Yes, it was.

Q. You have testified, in your direct examination, that Miss Toguri brought food to Prisoners of War. When did you hear about this—since the war? A. I heard it very recently.

(Deposition of Lily Ghevenian.)

Q. In 1949?) [11]

(A. Yes.

Q. Of your own knowledge, do you know any occasion, when Miss Toguri supplied food to Prisoners of War?

A. I did not know, then I learned it later.)

Q. What did Miss Toguri call herself when she was broadcasting the Zero Hour?

A. She used to say, "This is Orphan Annie."

Q. Did she ever refer to herself as anything else on this program? A. No, she has not.

Q. Do you recall Miss Toguri referring to herself as "Ann," when she was broadcasting the Zero Hour? A. I do not remember that.

Q. Did Miss Toguri ever mention to you that she was under any duress to work at the radio station?

A. She mentioned once that Kempeis were watching her.

Q. Miss Ghevenian, do you recall making a statement to Frederick Tillman, of the Federal Bureau of Investigation, recently?

A. Yes, I have talked to him.

Q. Do you recall telling Mr. Tillman that Miss Toguri mentioned that she was never under any duress of any kind?

A. Yes, I have, but I recall a few incidents as I talk to you.

Q. Do you recall, also, at the same time that you told Mr. Tillman that Miss Toguri was treated

(Deposition of Lily Ghevenian.)

in the same manner as any other Japanese or Nesei working at the broadcasting station?

A. Yes, she was.

Q. Was that statement true?

A. I did not know at that time what "duress" meant.

Q. Was Miss Toguri treated like any other Japanese and Nisei working in the station?

A. We were all treated alike.

Q. When did you talk to Mr. Tillman?

A. About a month ago.

Q. Have you changed your statement, concerning duress, as a result of talking [12] to someone else?

A. Yes, I have.

Q. Do you know of your own knowledge that Miss Toguri was forced to work for Radio Tokyo?

A. I do not know that.

Q. Did you ever hear any of the employees at the radio station refer to Miss Toguri as "Tokyo Rose"?

A. We have talked about it and we thought she was "Tokyo Rose."

Q. Was that the general opinion around the radio station?

A. Yes, it was.

Q. Was Miss Toguri pleased with her success, with regard to broadcasting at Radio Tokyo?

A. She was always in a hurry and I did not notice that.

Q. Do you recall making a statement to Mr. Tillman, when you stated, and I quote: "Miss To-

(Deposition of Lily Ghevenian.)

guri talked to me about being referred to as "Tokyo Rose" and was happy about it and was all smiles."

Did you sign his statement? A. No, I did not.

Q. Do you not recall telling Mr. Tillman that?

A. No, I do not.

Q. Did you ever tell Mr. Tillman that Miss Toguri mentioned being "Tokyo Rose" over the air?

A. I remember one time she said such a thing.

Q. That she made such a statement over the air?

A. As far as I remember, she did.

Q. Did any police official or Kempeitai question you concerning Miss Toguri? A. No.

Q. Did you ever hear Miss Toguri broadcast, where she referred to the Ameican troops as the "Boneheads in the Pacific"?

A. No, I don't remember that.

Q. Do you recall any of the scripts that Miss Toguri broadcast where she referred to herself as "Your Enemy Ann"?

A. I don't remember that. [13]

Q. Do you recall anything that Miss Toguri said while she was introducing these recordings?

A. She was just introducing records and did not say anything else.

Q. Did she say anything that was designed to cause homesickness to the American troops?

A. No, she did not.

Q. Did you ever hear Miss Toguri say, in her broadcast, statements to the effect—wouldn't it be

(Deposition of Lily Ghevenian.)

nicer to be home with your girl friend, rather than fighting mosquitoes in the jungles?

A. I don't remember her saying that.

Q. Was any of that material in the scripts that you typed? A. No.

Redirect Examination

By Mr. Tamba:

Q. What kind of script did you type and for what programs?

A. I typed commentaries, news, dialogues and Prisoners' messages.

Q. Do you remember the date you talked with Mr. Tillman? A. About a month ago.

Q. Do you know where he got your name?

A. He got it from several people.

Q. Did you sign any statement?

A. I did not sign any statement.

Q. Did he ask you if the Nisei and people who were not Japanese Nationals were under constant fear of the Kempeitai?

A. I think he did; I don't remember.

Q. Did he use the word "duress"?

A. Yes, he did.

Q. Did you know what it meant?

A. I did not know at that time.

Q. Did you know of any Prisoners of War being slapped around Radio Tokyo?

A. In Radio Tokyo? No.

(Deposition of Lily Ghevenian.)

Q. Were any other girls referred to as "Tokyo Rose"?

A. In the radio station? [14]

Q. Yes.

A. They did not know who "Tokyo Rose" was.

Q. Were any of the other girls suspected of being "Tokyo Rose"?

A. Yes.

Q. Who were they?

A. Ruth Hayakawa and June Suyama.

Q. Any others?

A. That's all I remember.

Q. In answer to one of Mr. Story's questions, you said you heard Miss Toguri broadcast over the air that she was "Tokyo Rose"?

A. She did mention it; it was in the script.

Q. Do you know whose script that might have been?

A. No.

Q. Who brought you that script?

A. I do not remember whether it was Ken Oki or Iva.

Q. It could have been Ken Oki who brought the script that day?

A. Yes.

Q. But you don't recall who actually broadcast that remark?

A. I do not.

Q. Do you remember anything said by Miss Toguri when she handed you the script, as to whether she had read it?

A. Sometimes she told me to rush it, because she had not read the script yet.

(Deposition of Lily Ghevenian.)

Recross-Examination

By Mr. Story:

Q. Have you talked to Miss Toguri's husband since you were interviewed by Mr. Tillman?

A. I met Mr. D'Aquino at Mr. Tamba's office.

Q. Did you have a discussion with Mr. D'Aquino at that time? A. No, I did not.

Q. Have you talked to Mr. D'Aquino at any other time?

A. I met him at Mr. Tamba's hotel and that's the only time I saw him.

Redirect Examination

By Mr. Tamba:

Q. Miss Ghevenian, you have talked to many people about this? [15] A. Yes.

Q. You've come to my hotel on one occasion and again this morning? A. Yes.

Q. And the first time you came to my hotel, there were many people present, weren't there?

A. I remember only three persons other than Mr. Tamba—Nakamura, Ono and D'Aquino.

Q. I asked you what you knew about the case?

A. Yes.

Q. And no one has told you what to testify?

A. No.

Q. And you were told to testify to the truth and nothing but the truth? A. Yes.

Q. You have had discussions with outsiders and

(Deposition of Lily Ghevenian.)

other people, regarding this case, and you asked other people why they were testifying against Iva when she did nothing wrong?

A. Yes, I have talked to them.

Q. And what did they tell you in substance?

Mr. DeWolfe: Objected to as hearsay.

The Court: Submitted?

Mr. Collins: Yes.

The Court: The objection is sustained.

(A. These people who testify against her, they told me to go ahead and have a good time and get a free ride to the United States like they did.)

Q. Will you tell us who those people are, if you remember? A. Ken Oki did.

Q. Anyone else?

A. Other people who went on that trial won't even say "Hello" to me.

Q. They are trying to avoid you?

A. That's right.

Q. Who is trying to avoid you?

A. Nakamoto.

Q. Anyone else, if you know? A. No.

/s/ LILY GHEVENIAN. [16]

Japan,

City of Tokyo,

American Consular Service—ss:

I do solemnly swear that I will truly and impartially take down in notes and faithfully tran-

scribe the testimony of Lily Ghevenian, a witness now to be examined, so help me God.

/s/ MARION A. PETERSON.

Subscribed and sworn to before me this eighteenth day of April, A.D. 1949.

/s/ THOMAS W. AINSWORTH,

Vice Consul of the United
States of America.

[American Consular Service Seal.]

Service No. 578a; Tariff No. 38; No fee prescribed.

Japan

City of Tokyo,

American Consular Service—ss.

CERTIFICATE

I, Thomas W. Ainsworth, Vice Consul of the United States of America in and for Tokyo, Japan, duly commissioned and qualified, acting under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the Matter of United States of America, Plaintiff, vs. Iva Ikuko Toguri D'Aquino, Defendant, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between United States of America vs. Iva Ikuko Toguri D'Aquino, do hereby certify that in pursuance of the aforesaid stipulation and court order and at the request of Theodore Tamba, counsel for the defendant Iva Ikuko Toguri

D'Aquino I examined Lily Ghevenian, at my office in Room 335, Mitsui Main Bank Building, Tokyo, Japan, on the eighteenth day of April, A.D. 1949, and that the said witness being to me personally known and known to me to be the same person named and described in the interrogatories, being by me first sworn to testify the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories in the cause in which the aforesaid stipulation, court order, and request for deposition issued, her evidence was taken down and transcribed under my direction by Marion A. Peterson, a stenographer who was by me first duly sworn truly and impartially to take down in notes and faithfully transcribe the testimony of the said witness Lily Ghevenian, and after having been read over and corrected by her, was subscribed by her in my presence; and I further certify that I am not counsel or kin to any of the parties to this cause or in any manner interested in the result thereof.

In witness whereof, I have hereunto set my hand and seal of office at Tokyo, Japan, this second day of May, A.D. 1949.

/s/ THOMAS W. AINSWORTH,
Vice Consul of the
United States of America.

[American Consular Service Seal.]

Service No. 743; Tariff No. 38; No fee prescribed.

[Endorsed]: Filed May 9, 1949.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 31712 R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IVA IKUKO TOGURI D'AQUINO,

Defendant.

DEPOSITION OF RUTH HAYAKAWA

Deposition of Ruth Hayakawa, taken before me, Thomas W. Ainsworth, Vice Consul of the United States of America, in Mitsui Main Bank Building, Room 335, in Tokyo, Japan, under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the matter of United States of America vs. Iva Ikuko Toguri D'Aquino, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between the United States of America vs. Iva Ikuko Toguri D'Aquino.

The plaintiff appearing by Frank J. Hennessey, United States District Attorney; Thomas DeWolfe, Special Assistant to the Attorney General, and Noel Story, Special Assistant to the Attorney General, and the defendant, appearing by Wayne N. Collins and Theodore Tamba.

The said interrogations and answers of the wit-

ness thereto were taken stenographically by Marion A. Peterson and were then transcribed by her under my direction, and the said transcript being thereafter read over correctly to said witness by me was then signed by said witness in my presence.

It is Stipulated that all objections of each of the parties hereto, including the objections to the form of the questions propounded to the witness and to the relevancy, materiality and competency thereof, and the defendant's objections to the use of the deposition or any part of the deposition, by plaintiff, on the plaintiff's case in chief, shall be reserved to the time of trial in this cause.

SUMI RUTH HAYAKAWA

of Tokyo, Japan, engaged in foreign trade of lawful age, being by me first duly sworn, deposes and says:

Questions propounded by Mr. Tamba:

Q. Your name is Ruth Hayakawa?

A. Yes; Sumi Ruth Hayakawa.

Q. And you live at Tokyo? A. Yes.

Q. And you are in business in Tokyo?

A. That's right.

Q. And you are one of the directors of the Yanase Export and Import Company, Limited?

A. That's right.

Q. And you are also engaged in other businesses?

(Deposition of Sumi Ruth Hayakawa.)

A. That's right; Director of Imperial Enterprises and Agent for the Vulcan Trading Company, India.

Q. And you were born in Japan? A. Yes.

Q. And you are a citizen of Japan?

A. Yes.

Q. You were educated in the United States. Where? A. Los Angeles.

Q. And how long have you resided in Japan?

A. Since my return to Japan in 1941.

Q. Were you ever employed by Radio Tokyo?

A. Yes.

Q. When did you enter the employ of Radio Tokyo? A. Mid-April, 1943.

Q. And how long were you employed with Radio Tokyo? [2*]

A. I was officially employed until April, 1945.

Q. Are you acquainted with Iva D'Aquino?

A. Yes, I am.

Q. When did you meet her?

A. I met her in the Summer of 1943.

Q. Where? A. At the radio station.

Q. What was she doing at that time?

A. She came in as a typist and I believe she was a typist when I met her.

Q. Do you know whether or not she ever participated in a radio broadcast known as the Zero Hour? A. Yes.

Q. When did she start broadcasting on the Zero

* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Deposition of Sumi Ruth Hayakawa.)

Hour? A. I think, in the Fall of 1943.

Q. And how long was she on this program?

A. She was there when I left in February, 1945.

Q. Do you know who was in the cast of that program?

A. Yes; Norman Reyes and Iva, Ken Oki, George Nakamoto, Mr. Oshidari, Ken Ishii, Sash Moriyama.

Q. Were there any women, besides Iva, on that program? A. Yes, Mieko Furuya.

Q. Was she Mrs. Oki? A. Yes.

Q. Was Mary Ishii on that program?

A. Not while I was there.

Q. Was Mrs. Norman Reyes?

A. She was on the announcing staff; she might have pinch-hit for Iva.

Q. Did you ever?

A. Yes; in the Fall of 1943, when Iva started to broadcast, I took over the Sunday evening broadcast in Iva's absence.

Q. Did you ever, on any other occasion?

A. I believe I did. [3]

Q. Do you know of any other women who substituted for Iva in her absence?

A. Mieko Furuya (Mrs. Oki) might have.

Q. Do you know of any others?

A. I doubt whether the other women substituted.

Q. Were there any other women announcers in Radio Tokyo, besides you and the others you mentioned?

(Deposition of Sumi Ruth Hayakawa.)

A. Yes; there was June Suyama and Kay Fujiwara, and Margaret Kato, and Kathryn Muraoka (Mrs. Reyes).

Q. Do you know the girl who broadcast on the German Hour? A. Yes.

Q. What was her name?

A. Matsunaga; I can't think of her first name.

Q. Do you know where that girl is today?

A. I heard, in New Jersey.

Q. Do you know where June Suyama is?

A. She died about a year ago.

Q. Do you know a man, named Takano?

A. Yes, I did.

Q. Who was he?

A. He was personnel employment chief—head of personnel employment at Radio Tokyo.

Q. Where is that man today?

A. He died in 1944 or 1945, during the air-raid.

Q. Incidentally, when did the air-raids increase in intensity in this area?

A. The first air-raid was in November, 1944, and then again in January and February, 1945, then I left Tokyo. Judging from the paper, it continued in March and April.

Q. Did you ever return to Tokyo in March and April?

A. I returned to Tokyo the first of April and there was a severe air-raid that night and several during my two weeks' stay in Tokyo.

Q. Do you know a man by the name of Major Cousens? A. Yes, I do. [4]

(Deposition of Sumi Ruth Hayakawa.)

Q. Who was he?

A. He was a Prisoner of War, who was working at the radio station.

Q. Did he train you to broadcast?

A. No, he did not train me at the beginning—it was Ted Wallace who trained me. Later Major Cousens assisted me when I read commentaries.

Q. When he assisted you, will you tell me what he did?

A. He coached me, by asking me to read and re-read his commentaries, telling me where to emphasize and where to pause.

Q. Do you know who coached or trained Mrs. D'Aquino?

A. I heard that both the Prisoners of War worked with Mrs. D'Aquino, coaching her for radio.

Q. Did you ever see her with either of these two men—coaching or training Mrs. D'Aquino?

A. Yes, I think I have. I remember Ted Wallace assisted Iva at the microphone.

Q. What kind of a microphone voice did Mrs. D'Aquino have, if you know?

A. I didn't think it was good.

Mr. DeWolf: Move that go out as a conclusion and opinion.

The Court: What she thought of the voice may go out. The objection will be sustained. The jury will disregard it.

Q. Do you remember Mrs. D'Aquino being away from the radio station for periods of time?

(Deposition of Sumi Ruth Hayakawa.)

A. Yes; I didn't know for what reasons, but she was frequently away from the station. The staff complained about her absences, especially Ken Oki.

Q. When you substituted for Mrs. D'Aquino, who selected your records?

A. I believe Cousens or Ted Wallace selected the records and made the script, which I read.

Q. Do you know who was the Saturday Night Party Girl? A. Mrs. Oki.

Q. What did she do on the program?

A. She came on every Saturday, as Saturday Night Party Girl Betty.

Q. Did she introduce records?

A. Yes, she introduced music.

Q. Did you see Prisoners of War around that radio broadcasting room?

A. The only Prisoners of War around during the Zero Hour, during the late afternoon—they were Wallace and Cousens. There were other Prisoners of War around at other times, who used the same studio. They were around during the early afternoon, whereas the Zero Hour Prisoners of War were late afternoon. [5]

Q. Who was in charge of the Prisoners of War?

A. I don't know, in the late afternoon.

Q. Did you ever see Nakamoto with the Prisoners of War?

A. Nakamoto had his private room, in which Cousens and Wallace worked.

(Deposition of Sumi Ruth Hayakawa.)

Q. Do you know what the Kempeitai was during the war?

A. The Kempeitai was the Japanese Army policemen.

Q. Were you ever apprehended by the Kempeitai?

Mr. DeWolfe: I object to that as incompetent, irrelevant and immaterial, improper, not germane to the issue.

Mr. Collins: I will point out that if she was there at the time, as the testimony indicates, the activities of the Kempeitai would be pertinent to the issue.

Mr. DeWolfe: As to what they did, on this particular witness that has nothing to do with the defendant.

Mr. Collins: Well, I think that the next answer would explain that. I mean, I think the answer itself would explain that.

The Court: I will strike it out if it has no place in the record. Read it.

A. Yes, I was questioned by the Kempeitai in April, 1945, and detained over night. They called me in because I frequented the Swedish Legation, but most of the questioning was concerning Radio Tokyo. They wanted to know who in Radio Tokyo were Pro-American and who was whispering that Japan was losing the war.

The Court: Proceed, the question and answer may stand.

(Deposition of Sumi Ruth Hayakawa.)

Q. Do you know if Mrs. D'Aquino broadcasted any propaganda and anything detrimental to the United States?

A. No, I have not heard her broadcast anything detrimental to America.

Q. Do you know of any incidents wherein Mrs. D'Aquino indicated that she was in fear of the Kempeitai?

A. She never told me outright, except on one occasion—that was when we of the radio station had a party at Kathryn Muraoka's home. Everybody started to dance, but when Iva was asked to dance, she refused; so I asked her why she didn't dance, and she said that dancing was prohibited and the Kempeitai would call us or pick on us if we danced.

Q. Did you ever see Kempeitais or persons suspected of being Kempeitais around the radio station, while you were there?

A. Yes, there were many Kempeitais and a few were pointed out to me as Kempeitais. Also, we did not know among ourselves who were Kempeitais.

Q. Do you recall who was pointed out to you as Kempeitai or suspected of being Kempeitais?

A. I don't recall the names or faces of the Kempeitai, there were so many around the radio station, but among the employees of the radio station, I personally had a feeling that Mr. Nii was assisting the Kempeitai; I was afraid to talk to him. [6]

Q. While you were at the radio station, did you ever hear anyone mention the name "Tokyo Rose?"

A. Yes. I first heard the name "Tokyo Rose"

(Deposition of Sumi Ruth Hayakawa.)

in 1944, when Ken Oki asked me whether I had read the newspapers of that day. I recall definitely that it was Sunday evening and when I told Ken Oki that I had not seen the papers, he showed me a copy of news that came in from the Foreign Office, which said the G.I.s in the South were enjoying the radio programs from Tokyo, especially the music and the voice of a young lady, and this article said that the woman's voice was very soft and appealing and they liked her program, and they wondered who "Tokyo Rose" was; so, I recall asking Ken who was "Tokyo Rose" and Ken told me that it was I, because the article said Sunday evening and I was on the Sunday evening program; and, also, Ken pointed out that my voice was soft and appealing, whereas Iva's voice was not.

Q. Do you recall Mr. Oki, on another occasion, saying: "Boys, we are making history; the monitor picked up the 'Tokyo Rose' story. A Seattle store would like to sponsor the program."?

A. No, I do not recall.

Q. Do you remember Ruth Matsunaga, who was the girl on the German Hour, I believe?

A. I don't know whether her first name was Ruth or not, but her last name was Matsunaga.

Q. Did she resemble Mrs. D'Aquino?

A. Yes, she was round-faced and plump, like Iva was—more inclined to be square-jawed.

Q. Do you recall whether or not Mrs. D'Aquino had difficulty with the Japanese language?

(Deposition of Sumi Ruth Hayakawa.)

A. Yes. I don't believe she knew the language as well as I, and I am pretty poor.

Q. Do you know whether she was registered as an alien with the Japanese police and needed travel permits, in order to leave the city?

A. Yes, I think I knew that; I don't know whether I heard it from her or [7] others, but I knew that she was registered as an alien and had difficulty traveling in Tokyo.

Q. Did you know a Charles Yoshii?

A. Yes, Chuck Yoshii was at the radio station for many years before I came and was considered one of our best announcers.

Q. Did you know a George Noda?

A. Yes, George Noda, I believe, entered the radio station a few months before I did.

Q. What did he do at the radio station?

A. George Noda was on the announcing staff, reading news and commentaries.

Q. Did you know a Dorsey Kurokawa?

A. Yes, Dorsey Kurokawa came to the radio station in the latter part of 1944 and was on the regular announcing staff, reading news and commentaries.

Q. What type of music was introduced by Mrs. D'Aquino?

A. Iva's program consisted of jazz and popular music, and light operas and semi-classics.

Q. Did you know a Mrs. Topping?

A. Yes, I know her very well.

(Deposition of Sumi Ruth Hayakawa.)

Q. Was she connected with Radio Tokyo?

A. Mrs. Topping was not connected with Radio Tokyo, but she came in periodically to broadcast.

Q. Did you accompany Mrs. Topping to and from the radio station on those occasions?

A. Yes, I was always with Mrs. Topping when she came to the radio station.

Q. Did you ever help Mrs. Topping prepare scripts?

A. I have helped Mrs. Topping a few times with her script, typing them for her.

Q. Did you know a Miss Ward? A. Yes.

Q. Who was she?

A. Miss Ward was living with Mrs. Topping and is a pianist.

Q. Did she ever come to the radio station? [8]

A. Yes, Miss Ward has played the piano over the air a few times.

Q. Did you have occasion to observe whether or not Mrs. D'Aquino was friendly with the Japanese personnel around Radio Tokyo, or was she more friendly with Prisoners of War?

A. No, she was not friendly with the Japanese; she was always polite to all of us, but kept herself away from our large staff room and confined herself to the Zero Hour staff room and the Prisoners of War.

Q. Miss Hayakawa, you had occasion a number of times to take food and things to Prisoners of War, did you not?

A. While the three Prisoners of War, Cousens,

(Deposition of Sumi Ruth Hayakawa.)

Wallace and Reyes were in our large staff room, when I entered Radio Tokyo, I felt sorry for their food situation, and they often spoke of the lack of vegetables, so I used to buy fresh vegetables and pass it to them. Later I passed several American magazines which I had brought back from the States to the Prisoners of War.

Q. And that was done secretly? A. Yes.

Q. Did you know of Mrs. D'Aquino doing the same thing?

A. She might have, but she would not have said anything about it, just as I have never told what I had done.

Q. You told me that the other day and that is one of the first times you've mentioned it?

A. Yes.

Q. Did you ever recall Mrs. D'Aquino broadcasting over the radio about the loss of ships?

A. No, I have never heard her broadcast anything but music announcements.

Q. Were you present in the radio station when the fall of Saipan was announced by the Japanese Government as flash news and when the Zero Hour program was interrupted for that occasion?

A. I heard about it, but I don't believe I was there that day—I don't believe so, it may have been my day off.

Cross-Examination

By Mr. Story:

Q. Miss Hayakawa, you mentioned the names

(Deposition of Sumi Ruth Hayakawa.)

of several female announcers at Radio Tokyo. Were any of these people regular participants on the Zero Hour? [9]

A. No, the women announcers on the Zero Hour were only Iva D'Aquino and Mieko Oki.

Q. Did Mrs. Oki have a regular part in all the programs?

A. Yes, after she joined the Zero Hour staff, she no longer belonged to our regular announcers staff.

Q. Did she participate every day after she joined or did she work from time to time?

A. She was not on daily, but confined to Saturday night, except when she substituted for Mrs. D'Aquino, in Mrs. D'Aquino's absence. But she was at the radio station every day. I used to see her every day. We were quite friendly.

Q. Was the Sunday broadcast, at the time Zero Hour was usually broadcast, called the Zero Hour program?

A. No. Zero Hour program was the program of music by Norman Reyes. To my knowledge, the entire program was not called the Zero Hour and the Zero Hour program on Sunday evenings followed the music program that I broadcasted for. The script was written by Cousens.

Q. When you were broadcasting, did you ever refer to yourself as "Orphan Ann"?

A. No, I have never referred to myself as "Orphan Ann." On Sunday evenings, it was a semi-classical music program.

(Deposition of Sumi Ruth Hayakawa.)

Q. Did you ever refer to yourself as "Ann" on any program?

A. I have never referred to myself as "Ann."

Q. In any of the broadcasts that Mrs. D'Aquino made, that you heard, did you ever hear the Americans referred to as the "Orphans of the Pacific"?

A. I don't recall specific details of any of her programs and can't say that I exactly remember.

Q. Did you ever hear her say in a broadcast—the Americans in the Pacific were "Bone Heads"?

A. No, I have never heard her call such names.

Q. Have you ever heard Mrs. D'Aquino make a broadcast, saying that it was a pity that the Americans were in the Pacific fighting mosquitoes rather than being home?

A. No, I don't recall such details of her script.

Q. What did Mrs. D'Aquino call herself on the radio?

A. In the earlier part of Mrs. D'Aquino's music program, she had no name, but later on they extended the program and she began to call herself as "Orphan Ann."

Q. Did any other announcer or any other participant use the name "Orphan Ann," other than Mrs. D'Aquino, to your knowledge?

A. To my knowledge, no one, other than Mrs. D'Aquino, called herself "Orphan Ann."

Q. Did you hear the Zero Hour program broadcast regularly?

(Deposition of Sumi Ruth Hayakawa.)

A. I heard the broadcast frequently, but not regularly.

Q. Did Mrs. D'Aquino ever tell you that she was forced to work in Radio Tokyo or under duress at any time?

A. She has never told me of being under duress or forced to broadcast, but I had the impression that she was. She's never talked very much to me of herself or of her program.

Q. Did you ever see anyone threaten Mrs. D'Aquino in any way, when she was at Radio Tokyo?

A. No, I have not. But no one has seen me being questioned by the Kempeitai either. They work very secretly.

Q. These Prisoners of War that you mentioned in your testimony, who worked in the radio station—what did they do?

A. Writing scripts and announcing, presenting skits and plays.

Q. These Prisoners of War, then, that Mrs. D'Aquino gave food to, were collaborators, were they not, with the Japanese Government?

A. They were working at the radio station by order of the Japanese Army, but I wouldn't call it collaborating.

Q. Did you ever see copies of the orders, ordering Prisoners of War to work for the Japanese Government?

A. No.

(Deposition of Sumi Ruth Hayakawa.)

Q. Then that is only an opinion of yours?

A. I guess so. [11]

Redirect Examination

By Mr. Tamba:

Q. Did you ever know that Mrs. Reyes broadcast on the Zero Hour?

A. She wasn't the regular announcer on the Zero Hour. I don't know whether she ever broadcasted or not.

Q. Were there any other girls who broadcast introductions to music on Radio Tokyo, besides Mrs. D'Aquino?

A. Yes, all the women announcers specialized in announcing music programs.

Q. What time of the day did you go on the air on Sundays?

A. My schedule of announcing programs changed frequently during my years at the radio station. There were Sundays when I had an afternoon symphony program (music concert) and then the Sunday Concert on the same transmission as the Zero Hour.

Q. That would be between 6 and 7 p.m.?

A. My recollection of that transmission was from 5:40 to 6—twenty minutes.

Q. How long was Mrs. D'Aquino's program, if you remember?

A. Her program was about twenty minutes.

Q. How many records did she play on the pro-

(Deposition of Sumi Ruth Hayakawa.)

gram, if you remember? A. I can't say.

Q. How many records did you play when your program was from 5:40 to 6 p.m.?

A. I think I usually played about six records.

Mr. Tamba addressing Mr. Story:

Now I'm asking these questions, Mr. Story, for the sole purpose of showing general conditions about the radio station and none other.

Redirect Examination

Continued

By Mr. Tamba:

Q. Did you ever tell anyone that you were arrested by the Kempeis?

A. I didn't mention my arrest until after the war was over.

Q. Were you in fear of the Kempeitai all of the time that you worked at the radio station?

Mr. DeWolfe: I object to that as immaterial, improper, irrelevant and incompetent.

The Court: The objection is sustained.

Mr. Collins: I might point out, if Your Honor please, that the witness has testified that the Kempeitai were at Radio Tokyo constantly and——

Mr. DeWolfe: I might say, Your Honor, about that, that the question was, "Were you in fear of the Kempeitai—", if Your Honor wishes to hear from me?

The Court: If counsel is through?

Mr. Collins: Yes. And I might say, it is a fairly long answer, if Your Honor please, but I think that

(Deposition of Sumi Ruth Hayakawa.)

it has a direct bearing upon the material issue and relates to the fact that there were Kempeitai agents at Radio Tokyo constantly. She so testified in the deposition and now she gives a complete explanation, together with certain details, that actually transpired at Radio Tokyo.

The Court: Read the question. I think I sustained the objection.

(Question reread by Mr. Collins).

The Court: The objection will be sustained.

Mr. Collins: That was the last question that appears on the original.

Mr. Tamba: That is it, that is the last question. The answer is quite long.

(A. I wasn't aware of fear of the Kempeitai until toward the end of 1943 and the rest of the time, and it was a constant dread from the Summer of 1944, in that you didn't dare to talk to anyone, whether they were your friends or not, of personal opinions or viewpoints. I remember one detail; the Prisoners of War asked me once what my pleasures were—what I did for (12] amusement—and I remember saying that flower arrangement was the only source of pleasure and recreation for me. That remark was considered unpatriotic by the Kempeitais and Mrs. Oki (Mieko Furuya), whom I considered one of my closest friends at the time, warned me that the Kempeitai might call me in and reprimand me for telling the Prisoners of War that. And for talking or being seen with the Pris-

(Deposition of Sumi Ruth Hayakawa.)

oners of war also. She said that the Kempeiti had told her to tell me. It scared me to the extent where I no longer went down to the studio to listen to their program, except only on the occasions when I was called in to participate in the Prisoners of War program. It was impossible to discuss interviews by the Kempeitai with anyone, because when I was detained by the Kempeitai, before they released me, I had to sign a statement which they wrote because I could not write Japanese, which they read to me and explained to me, which meant that I was not to tell anyone, not even my mother and father, that I was questioned and detained by the Kempeitai. If I told anyone about my detention, the Kempeitai will not be held responsible for anything that might happen to me. I had to sign that and put my thumb print on it. Of course, they told me to sign the statement, telling me incidents of people being questioned and detained and not coming out of the Kempeitai Headquarters alive.)

/s/ SUMI RUTH HAYAKAWA.

Japan,

City of Tokyo,

American Consular Service—ss:

I do solemnly swear that I will truly and impartially take down in notes and faithfully transcribe the testimony of Ruth Hayakawa, a witness now to be examined, So help me God.

/s/ MARION A. PETERSON.

Subscribed and sworn to before me this eighteenth day of April, A.D. 1949.

/s/ THOMAS W. AINSWORTH,

Vice Consul of the

United States of America.

[American Consular Service Seal.]

Service No. 577a; Tariff No. 38; No fee prescribed.

Japan,

City of Tokyo,

American Consular Service—ss:

CERTIFICATE

I, Thomas W. Ainsworth, Vice Consul of the United States of America in and for Tokyo, Japan, duly commissioned and qualified, acting under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the Matter of United States of America, Plaintiff, vs. Iva Ikuko Toguri D'Aquino, Defendant, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between United States of America vs. Iva Ikuko Toguri D'Aquino, do hereby certify that in pursuance of the aforesaid stipulation and court order and at the request of Theodore Tamba, counsel for the defendant Iva Ikuko Toguri D'Aquino I examined Sumi Ruth Hayakawa, at my office in Room 335, Mitsui Main Bank Building,

Tokyo, Japan, on the eighteenth day of April, A.D. 1949, and that the said witness being to me personally known and known to me to be the same person named and described in the interrogatories, being by me first sworn to testify the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories in the cause in which the aforesaid stipulation, court order, and request for deposition issued, her evidence was taken down and transcribed under my direction by Marion A. Peterson, a stenographer who was by me first duly sworn truly and impartially to take down in notes and faithfully transcribe the testimony of the said witness Sumi Ruth Hayakawa, and after having been read over and corrected by her, was subscribed by her in my presence; and I further certify that I am not counsel or kin to any of the parties to this cause or in any manner interested in the result thereof.

In witness whereof, I have hereunto set my hand and seal of office at Tokyo, Japan, this second day of May, A.D. 1949.

/s/ THOMAS W. AINSWORTH,
Vice Consul of the
United States of America.

[American Consular Service Seal.]

Service No. 746; Tariff No. 38; No fee prescribed.

[Endorsed]: Filed May 9, 1949.

In the Southern Division of the United States District Court for the Northern District of California.

No. 31712 R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IVA IKUKO TOGURI D'AQUINO,

Defendant.

DEPOSITION OF FOUMY SAISHO

Deposition of Foumy Saisho, taken before me, Thomas W. Ainsworth, Vice Consul of the United States of America, in Mitsui Main Bank Building, Room 335, in Tokyo, Japan, under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the Matter of the United States of America vs. Iva Ikuko Toguri D'Aquino, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between the United States of America vs. Iva Ikuko Toguri D'Aquino.

The plaintiff, appearing by Frank J. Hennessy, United States District Attorney; Thomas DeWolfe, Special Assistant to the Attorney General, and Noel Story, Special Assistant to the Attorney General, and the defendant, appearing by Wayne N. Collins and Theodore Tamba.

The said interrogatories and answers of the witness thereto were taken stenographically by Irene Cullington and were then transcribed by her under my direction, and the said transcriptions being thereafter read over correctly to said witness by me and then signed by said witness in my presence.

It is Stipulated that all objections of each of the parties hereto, including the objections to the form of the questions propounded to the witness and to the relevancy, materiality and competency thereof, and the defendant's objections to the use of the deposition, or any part of the deposition, by plaintiff, on the plaintiff's case in chief, shall be reserved to the time of trial in this cause.

FOUMY SAISHO

of Tokyo, Japan, employed by the "Readers Digest," Japanese Branch, of lawful age, being by me duly sworn, deposes and says:

Direct Examination

By Mr. Theodore Tamba:

Q. State your full name, please?

A. Foumy Saisho.

Q. Miss Saisho, where were you born?

A. Japan.

Q. You are a Japanese National?

A. Yes.

Q. You have been in the United States, have you not?

A. Yes.

Q. When were you in the United States.

(Deposition of Foumy Saisho.)

A. From 1930 to 1933.

Q. You were attending the University of Michigan?

A. Yes.

Q. What is your present business or occupation?

A. I am with the Editorial Department of the Readers Digest, Japan Branch.

Q. Were you ever connected with Radio Tokyo?

A. Yes.

Q. For how long a period of time?

A. From August, 1935, to 1945, September, I think.

Q. What work did you do at Radio Tokyo?

A. I was chief translator.

Q. What did you translate, Miss Saisho?

A. Japanese commentaries. Before the war I used to translate cultural subjects and news from Japanese to English.

Q. During the war what did you do?

A. I was in the Lecture Department translating Japanese into English.

Q. Do you know Iva Toguri, also known as Iva D'Aquino?

A. Yes.

Q. When did you quit Radio Tokyo?

A. When?

Q. Yes.

A. Around 1943.

Q. How long did your acquaintanceship continue?

A. Until around the end of the war. Since then I have not seen her.

(Deposition of Foumy Saisho.)

Q. Did you ever work on any of her script?

A. No, I have not.

Q. What did Miss Toguri do at the radio station?

A. At first she was with the business department. Later on she became an announcer. For Major Cousens' program, the "Zero Hour."

Q. Do you know who prepared her script?

A. Major Cousens.

Q. Who coached her? A. Major Cousens.

Q. What kind of script did she read?

A. She read introductions to music. [3*]

Q. What kind of music was that?

A. Usually American jazz.

Q. Did Miss Toguri ever broadcast the loss of ships that you know of? A. No.

Q. Who did broadcast that type of news?

A. That would be broadcast by the news announcer.

Q. Do you know who was on the Zero Hour program besides Miss Toguri and Major Cousens?

A. Ken Oki, Ken Ishii, Miss Hayakawa and Moriyama, and I think a person called Ozaki.

Q. Were any women on that program besides Miss Toguri? A. Not regularly.

Q. Did any women take part on that program at any time? A. Yes.

Q. Who were they?

* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Deposition of Foumy Saisho.)

A. Ruth Hayakawa, Mary Ishii, and the present Mrs. Oki.

Q. What name did she use in broadcasting?

A. "Annie," I think.

Q. Who gave her that name?

A. To the best of my knowledge, Major Cousens.

Q. Did you ever hear the name "Tokyo Rose" at the radio station? A. No.

Q. Did you ever hear anybody mention the name "Tokyo Rose" in conversation with you?

A. There was mention of "Tokyo Rose" toward the end of the war.

Q. Did you ever have a conversation with Ken Oki about Tokyo Rose? A. Yes.

Q. What was that conversation?

A. I asked him if Tokyo Rose indicated any particular person. He said that it did not represent any particular person, but it was used in broadcasting to the American soldiers. [4]

Q. Did you ever have a conversation with Mr. Oki to the effect that he thought he was entitled to one-half of the royalties for the use of "Tokyo Rose"? A. Yes.

Q. Where did that conversation occur?

A. Almost immediately after the surrender, early part of September.

Q. Where? A. Radio Tokyo.

Q. Did you ever have a conversation with Ken Oki in which he said "Iva can't do this to us"?

A. Yes.

(Deposition of Foumy Saisho.)

Q. Was that in reference to the use of the name "Tokyo Rose"? A. Yes.

Q. Did you ever hear or know of Mrs. D'Aquino broadcasting about men ineligible for the American army fraternizing with women who had been left at home? A. I don't recall that.

Q. Did you ever know of Mrs. D'Aquino broadcasting anything other than what was on her script?

A. No.

Q. Were there any other women at Radio Tokyo besides those you mentioned and Mrs. D'Aquino who broadcast news and music? A. Yes.

Q. Who were they?

A. Suyama, June, I think that was all.

Q. Kathleen Fujiwara, do you know her?

A. Yes.

Q. Did she broadcast news and announce music?

A. She announced music, I think.

Q. Are you familiar with the German Hour?

A. I heard a voice once. [5]

Q. Was that a woman's voice? A. Yes.

Q. What did she broadcast?

A. News, I think. I didn't pay much attention to it, but it was in English.

Q. What kind of a broadcasting voice did Miss Toguri have?

A. She had a rather masculine sort of voice, low and throaty.

Q. What kind of music did she introduce?

A. Chiefly, American jazz, I think.

(Deposition of Foumy Saisho.)

Q. Do know if the Japanese Government had other radio stations besides Radio Tokyo?

A. Yes.

Q. Where? A. In the South.

Q. Name some of the places?

A. Formosa, Batavia, and the Philippines.

Q. Have you been present at conferences at Radio Tokyo where those stations were discussed?

A. Yes.

Q. Was Major Tsuneishi present at the time?

A. Yes.

Q. Did you learn that Mrs. D'Aquino became married during the war?

A. No, I did not know that.

Q. Have you learned since? A. Yes.

Q. Did Mrs. D'Aquino ever remain around the station after working hours?

A. I don't believe so.

Q. Did you ever have conversations with Mrs. D'Aquino about the war.

A. Yes, occasionally. [6]

Q. In particular, on one occasion when she stated, "This is an awful country"? A. Yes.

Q. Were her attitudes and expressions pro-American or pro-Japanese?

A. Pro-American.

Mr. DeWolfe: Just a minute, Mr. Tamba. I object to that as calling for a conclusion and being too speculative and conjectural.

The Court: Submitted?

Mr. Collins: Yes.

(Deposition of Foumy Saisho.)

The Court: Objection sustained.

(A. Pro-American.)

Q. Did you know what the Kempei-tai was during the war? A. Yes.

Q. What was it?

A. Military Police; it was greatly feared by the people.

Q. Do you know of any Kempei-tai agents being present at Radio Tokyo while you were there?

A. Yes.

Q. Where were those Kempei-tai?

A. They mixed with people and came to investigate each worker—what they were doing.

Q. Do you recall a Kempei-tai agent who used to sit near to you? A. Yes, I do.

Q. Was he there continually or constantly watching you?

A. Not constantly. He would go away once in a while. Almost every day he was there.

Q. Did he ever ask you about other people in the station and what they were doing?

A. Yes.

Q. Do you know who prepared the news items on the Zero Hour?

A. I think it was by Ince and he broadcast it himself.

Q. Do you know whether Miss Toguri or Mrs. D'Aquino ever wrote any? A. I don't know.

Q. Did she ever make a statement to you that it was impossible for Japan to win the war?

(Deposition of Foumy Saisho.)

A. I don't quite recall, but something to that effect. [7]

Q. Did she ever make the statement to you that she was working for the prisoners of war for the purpose of aiding them and nothing else?

A. I don't recall that statement.

Q. Did you know that Mrs. D'Aquino had access to allied news reports and knew how the war was progressing?

A. Well, all Zero Hour people had, so naturally she may have.

Q. Did Mrs. D'Aquino ever tell you that she had information on short wave broadcast?

A. No.

Q. Did she ever tell you that she hated the Japanese militarists? A. Yes.

Q. Did you ever know Mr. Ken Oki?

A. Yes.

Q. Do you know his reputation for truth, honesty and integrity in this community?

Mr. DeWolfe: I object to that as incompetent, irrelevant and immaterial, no proper foundation being laid and not a proper impeachment question.

The Court: Objection sustained.

(A. Not good at all.)

Q. Do you know Ken Ishii? A. Yes.

Q. Do you know his reputation for truth, honesty and integrity?

Mr. DeWolfe: I object to that as being incom-

(Deposition of Foumy Saisho.)

petent, irrelevant and immaterial, not proper impeachment, no foundation laid.

The Court: Objection sustained.

(A. Not good at all.)

Q. Do you know George Nakamoto?

A. Yes.

Q. What is his reputation for truth, honesty and integrity?

Mr. DeWolfe: Objected to as being incompetent, irrelevant and immaterial, not proper impeachment, no proper foundation laid.

The Court: Objection sustained.

(A. It wasn't particularly too good.)

A. I think that is all.

Cross-Examination

By Mr. Story:

Q. Miss Saisho, you have testified that Major Cousens prepared the script which Miss Toguri used on the Zero Hour program? A. Yes.

Q. Do you know of your own knowledge that he prepared these scripts? A. Yes, I do. [8]

Q. Did Major Cousens remain at Radio Tokyo until the end of the war? A. No.

Q. When did he leave the radio station?

A. About June, I believe, 1944.

Q. Did Major Cousens return to the radio station after that time?

A. I heard that he did, but I never saw him.

Q. From June, 1944, until the end of the war

(Deposition of Foumy Saisho.)

you never saw Major Cousens at the radio station?

A. No.

Q. Who prepared Miss Toguri's scripts after Major Cousens left the radio station?

A. I don't know.

Q. Miss Saisho, how many times were you actually physically present at the radio station when the Zero Hour program was broadcast?

A. I believe only once.

Q. One time? A. Yes.

Q. Of your own knowledge do you know of any instances where Mrs. D'Aquino was questioned by the Kempei-tai? A. No.

Q. Was Mrs. D'Aquino forced in any way to broadcast for the Radio Tokyo?

A. Not to my knowledge.

Q. Did Miss Toguri ever indicate to you that she was proud of her success as an announcer on the Zero Hour program? A. Yes.

Q. Was Miss Toguri a conscientious hard worker at the radio station? A. Yes. [9]

Q. Where was the Zero Hour beamed on the short wave?

A. Mainly to the Pacific Islands and to Australia, I am not sure about that.

Q. Was the Zero Hour program intended for the American soldiers in the Southwest Pacific Islands? A. Yes.

Q. After Major Cousens became ill and left the radio station, did Miss Toguri ever tell you that

(Deposition of Foumy Saisho.)

the scripts which were being prepared for her were terrible and not worthy of being broadcast?

A. That is right; she did.

Q. Did Miss Toguri ever tell you that the Zero Hour program was the best program broadcast at Radio Tokyo?

A. I have a vague recollection of it, but not the exact words, but I have a vague recollection that she said something like that.

Q. Did Miss Toguri consider herself the most successful announcer at Radio Tokyo?

A. I believe so.

Q. Was Miss Toguri treated in the same manner as other Japanese Nationals?

A. By Radio Tokyo?

Q. By Radio Tokyo.

A. I am not sure; I don't know. In point of remuneration she was treated in the same Japanese way.

Q. Do you mean by that that she received the same pay as the other persons employed there?

A. Yes, the same rate.

Q. Was Miss Toguri required to work as many hours at the Radio Station as other personnel who received the same salary as she?

A. I don't believe so. [10]

Q. Approximately how long did Miss Toguri remain at the broadcasting station each day?

A. Less than five hours; actually she only came for her broadcast.

(Deposition of Foumy Saisho.)

Q. How many hours were you required to be at the radio station?

A. Minimum of eight hours. But, of course, she made it up. It was very easy to make eight hours when you are actually working less than that.

Q. My question was, Miss Saisho, how many hours each day was Miss Toguri required to be physically present at the radio station?

Mr. Collins: I submit, if Your Honor please, that is calling for the opinion and conclusion of the witness, no foundation is laid.

The Court: Submitted?

Mr. DeWolfe: I think it is a proper question.

(Question read.)

The Court: You may answer.

A. The same as the rest of the staff; that is, eight hours.

Q. Miss Toguri was required to put in eight hours each day at the radio station?

A. I am not sure, of course, but that is my belief.

Q. When did Miss Toguri usually arrive at the radio station?

A. Of course, I was not always watching her arrive, but I would see her usually in the afternoon.

Q. What time did you usually arrive at work each day? A. Did I?

Q. Yes.

(Deposition of Foumy Saisho.)

A. Before noon, anyway, between ten and eleven and stayed until seven.

Q. Did Miss Toguri arrive there in the morning between 10 and 11? A. No; very rarely.

Q. Then you are testifying that Miss Toguri was required to spend eight hours a day at the radio station?

A. That is the requirement for every staff member, but I am not sure whether she was a staff employee or just attached to it. I don't know the office arrangement in her personal case.

Q. What was your salary each month?

A. I have forgotten. It was about 120 yen and went up to 150 yen. [11]

Q. What was Miss Toguri's salary?

A. Of course, I don't know, but I imagine it was about the same.

Redirect Examination

By Mr. Tamba:

Q. Miss Saisho, do you know if Miss Toguri was absent from the radio station for any period of time? A. Yes.

Q. How often was she absent?

A. She was quite often absent. She was absent continually toward the end of the war.

Q. That is all.

Recross-Examination

By Mr. Story:

Q. You say she was absent continuously toward

(Deposition of Foumy Saisho.)

the end of the war. When did this start, how long before the end of the war?

A. As soon as Miss Ishii took over, that was, I don't recall the exact date, but the fall of 1944.

Q. You have testified that Miss Toguri was continuously absent from the summer of 1944, or do you mean the summer of 1945?

A. Autumn or winter of 1944. Still I am not prepared to say that she was continuously absent.

Q. But you worked at the radio station. Are you in a position to know when Miss Toguri was at the radio station and when she was not there?

A. No, there was no way of knowing exactly.

Q. Then so far as you know she could have been there all of the time and you would not have known about it?

A. Theoretically so, but it can't happen, because the people who came I would see.

Q. You have testified that you were only physically present in the radio studio on one occasion during the Zero Hour program?

A. Yes.

Q. That is all.

/s/ FOUMY SAISHO. [12]

Japan,

City of Tokyo,

American Consular Service—ss.

I do solemnly swear that I will truly and impartially take down in notes and faithfully tran-

scribe the testimony of Foumy Saisho, a witness now to be examined. So help me God.

/s/ IRENE CULLINGTON.

Subscribed and sworn to before me this twenty-first day of April, A.D. 1949.

/s/ THOMAS W. AINSWORTH,

Vice Consul of the

United States of America.

[American Consular Service Seal.]

Service No. 598a; Tariff No. 38, No fee prescribed.

Japan,

City of Tokyo,

American Consular Service—ss.

CERTIFICATE

I, Thomas W. Ainsworth, Vice Consul of the United States of America in and for Tokyo, Japan, duly commissioned and qualified, acting under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the Matter of United States of America, Plaintiff, vs. Iva Ikuko Toguri D'Aquino, Defendant, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between United States of America vs. Iva Ikuko Toguri D'Aquino, do hereby certify that in pursuance of the aforesaid stipulation and court order and at the request of Theodore Tamba, counsel for the defendant Iva Ikuko

Toguri D'Aquino I examined Foumy Saisho, at my office in Room 335, Mitsui Main Bank Building, Tokyo, Japan, on the twenty-first day of April, A.D. 1949, and that the said witness being to me personally known and known to me to be the same person named and described in the interrogatories, being by me first sworn to testify the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories in the cause in which the aforesaid stipulation, court order, and request for deposition issued, her evidence was taken down and transcribed under my direction by Irene Cullington, a stenographer who was by me first duly sworn truly and impartially to take down in notes and faithfully transcribe the testimony of the said witness Foumy Saisho, and after having been read over and corrected by her, was subscribed by her in my presence; and I further certify that I am not counsel or kin to any of the parties to this cause or in any manner interested in the result thereof.

In witness whereof, I have hereunto set my hand and seal of office at Tokyo, Japan, this fifth day of May, A.D. 1949.

/s/ THOMAS W. AINSWORTH,
Vice Consul of the
United States of America.

[American Consular Service Seal.]

Service No. 808; Tariff No. 38; No fee prescribed.

[Endorsed]: Filed Aug. 24, 1949.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 31712 R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IVA IKUKO TOGURI D'AQUINO,

Defendant.

DEPOSITION OF MASAACKI YANAGI

Deposition of Masaaki Yanagi, taken before me, Thomas W. Ainsworth, Vice Consul of the United States of America, in Mitsui Main Bank Building, Room 335, in Tokyo, Japan, under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the Matter of the United States of America vs. Iva Ikuko Toguri D'Aquino, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between the United States of America vs. Iva Ikuko Toguri D'Aquino.

The plaintiff appearing by Frank J. Hennessy, United States District Attorney; Thomas DeWolfe, Special Assistant to the Attorney General, and Noel Story, Special Assistant to the Attorney General, and the defendant, appearing by Wayne N. Collins and Theodore Tamba.

The said interrogations and answers to the witness thereto were taken stenographically by Irene Cullington and were then transcribed by her under my direction, and the said transcription being thereafter read over correctly to said witness by me and then signed by said witness in my presence.

It is Stipulated that all objections of each of the parties hereto, including the objections to the form of the questions propounded to the witness and to the relevancy, materiality and competency thereof, and the defendant's objections to the use of the deposition, or any part of the deposition, by plaintiff, on the plaintiff's case in chief, shall be reserved to the time of trial in this cause.

MASAAKI YANAGI

of Tokyo, of lawful age, being by me duly sworn, deposes and says:

Direct Examination

By Mr. Tamba:

Q. State your name in full.

A. Masaaki Yanagi.

Q. What is your present address?

A. 223 Suwa Machi Sinjuku-Ku, Tokyo.

Q. Where were you born?

A. In San Francisco, California.

Q. When? A. 11 October, 1918.

Q. When did you come to Japan?

A. In April, 1933.

Q. Have you had occasion to return to the United States since 1933?

(Deposition of Masaaki Yanagi.)

A. No, I never have.

Q. Were you ever in the Japanese Army?

A. Yes, from December, 1938, to May, 1942.

Q. Have you participated in a Japanese election?
A. Yes, I have. [2*]

Q. You are now a Japanese national and citizen, is that correct?
A. Yes.

Q. Were you ever connected with Radio Tokyo?

A. Yes, from November, 1943, to September, 1945.

Q. What were your duties at Radio Tokyo?

A. I was classified as a clerk and my duties were as English announcer.

Q. What did you broadcast?

A. News and commentaries and sometimes introduced music.

Q. Who prepared your scripts for broadcast?

A. They were prepared by the English writing staff and they translated the news which came from the Japanese script section.

Q. Are you married?
A. Yes, I am.

Q. What does your family consist of?

A. My wife and one son.

Q. What were your hours of employment at Radio Tokyo?
A. The hours varied.

Q. Do you know a person named Iva Toguri, also known as Iva D'Aquino?
A. Yes.

Q. When and where did you meet that person?

A. When I entered Radio Tokyo, she was work-

* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Deposition of Masaaki Yanagi.)

ing there as an announcer on the Zero Hour staff.

Q. What was she announcing on the Zero Hour?

A. She opened this program of the Zero Hour and also introduced music.

Q. What kind of music did she introduce?

A. It was jazz music.

Q. Did she read from any script in her announcing of musical records? [3]

A. Yes, she had a script in her hands.

Q. You have seen her broadcast?

A. Yes, I have.

Q. You have heard her broadcast?

A. Yes, I have.

Q. Have you ever noticed her in and around the radio station, coming and going from work, associating with people there?

A. No, I have not.

Q. May I put it this way. She was not particularly friendly with you, was she? A. No.

Q. Was she particularly friendly with Japanese people around the station? A. No.

Q. Was she particularly friendly with the prisoners, do you know? A. I don't know.

Q. Can you describe what kind of an announcing voice that Miss Toguri had?

A. One comment around the radio station when "Tokyo Rose" came out was that Tokyo Rose had a sweet voice, but I did not think she had a sweet voice.

Q. What kind of voice did she have?

(Deposition of Masaaki Yanagi.)

A. When I met her in the halls and said "hello" and when she answered, her voice sounded more masculine to me.

Q. How did her voice sound over the radio; did it have a musical sound?

A. Compared to the other girls' voices, her voice sounded masculine.

Q. Were there other women announcers around the radio station? A. Yes.

Q. Who were they?

A. They were Miss Suyama, Miss Hayakawa, Miss Murooka, and [4] Miss Mary Ishii, and for a short time, Miss Furuya, or the present Mrs. Oki.

Q. Was there a girl named Matsunaga?

A. Yes, there was a girl by that name, but she was not on the regular Radio Tokyo staff, but was on the German Hour.

Q. Was there a girl there by the name of Furuya? A. Yes. She was an announcer.

Q. What did Miss Suyama broadcast?

A. She broadcast news commentaries, introduced music and she had the children's hour.

Q. What did Miss Hayakawa do?

A. She did the same, except for the children's hour.

Q. What did Mrs. D'Aquino do?

A. She was on the Zero Hour.

Q. What did she broadcast?

A. She opened the program and introduced music.

(Deposition of Masaaki Yanagi.)

Q. Is that all she did?

A. Yes, that is all I remember.

Q. What did Miss Murooka do?

A. She was there for only one year and she was announcing news and commentaries and also introducing music.

Q. What did Miss Furuya do?

A. She was helping Mrs. D'Aquino on the Zero Hour. I recall that she was there for a short period.

Q. What did Mary Ishii do?

A. Toward the end of the war, Miss Ishii was helping Miss Toguri on the Zero Hour.

Q. What did Miss Furuya do?

A. She was announcing news commentaries and introducing music and also on the "Women's Hour."

Q. Do you know Mr. Ken Oki? A. Yes.

Q. What did he do?

A. He was on the staff of the Zero Hour.

Q. Do you know if he ever wrote script or broadcast news or commentaries?

A. While I was there I never saw him broadcasting but I heard he had broadcasted before I entered Radio Tokyo.

Q. Do you know if he wrote script?

A. I have seen him collect news and also type-writing, so I presume he was preparing script.

Q. Have you ever seen him in charge of prisoners of war? A. No, I have not.

Q. Do you know Nakamoto?

(Deposition of Masaaki Yanagi.)

A. Yes, I do.

Q. What did he do?

A. He was section chief on the "Zero Hour."

Q. Do you know whether or not he wrote script?

A. I saw him typing, but I do not know whether he was preparing script or not.

Q. Do you know Major Cousens?

A. Yes, I do.

Q. Who was he?

A. He was a prisoner of war at Radio Tokyo.

Q. What did he do at Radio Tokyo?

A. He was training the English announcers.

Q. Did you ever see him train any English announcer?

A. No, I have not.

Q. Do you know a man named Ken Ishii?

A. Yes.

Q. Where did you meet him?

A. I entered Radio Tokyo the same time that he did.

Q. Was he at Radio Tokyo continuously from the time you entered until the end of the war? [6]

A. No.

Q. Where was he?

A. I think he was called to the Japanese Army; I don't know the exact date, but I think for a period of about one year.

Q. Do you know Captain Ince? A. Yes.

Q. Who was he?

A. He was also a prisoner of war.

Q. What did he do at Radio Tokyo?

(Deposition of Masaaki Yanagi.)

A. I don't know exactly.

Q. What did Ishii do?

A. He was an English announcer, also, and he broadcast commentaries and introduced music.

Q. Do you know what the Kempei-tai organization is? A. Yes.

Q. Did they wear uniforms in and around Radio Tokyo?

A. I heard they were there, but I never saw them personally.

Q. They never bother you, did they?

A. No.

Q. For what reason?

Mr. De Wolfe: I object to that as incompetent, calling for the conclusion, hearsay.

The Court: What reason they did not bother her?

Mr. Collins: Yes.

The Court: Objection sustained.

(A. I was also in the Japanese Army and I had good knowledge of Japanese and I think that was the main reason why I wasn't bothered by the Kempei-tai.)

Q. Do you know of an occasion when the Kempei-tai arrested certain people who were connected with Radio Tokyo? A. Yes, I do.

Q. Who were they?

A. Bucky Harris; another Mr. Miyata and Miss Hayakawa. I don't know whether she was arrested or not, but she was being looked for.

(Deposition of Masaaki Yanagi.)

Q. As a matter of fact, you forewarned her, is that correct? [7]

A. Yes; the Section Chief warned her it was advisable to leave for the country because the Kempei-tai were looking for her, and I also warned her that it was advisable for her to leave for the country.

Q. Why was Miyata arrested by the Kempei-tai, if you know?

A. Mr. Miyata was called by the Kempei-tai because he had a New Year's party at his home and at this party some of the persons danced there.

Q. What kind of dancing was that?

A. It was American style dancing.

Q. Incidentally were the people in Japan during the war permitted to speak English on the street?

A. I don't know of any law prohibiting it, but I have knowledge of occasions where people were called by the Kempei-tai or questioned by them because they spoke English on the street or trains.

Q. Was the American game of baseball permitted in Japan during the war?

A. No, that was also stopped by the Japanese Government.

Q. Do you know whether or not the Nisei had a hard time in Japan during the war?

Mr. De Wolfe: Just a moment, Mr. Tamba. Object to that as calling for a conclusion, too speculative, conjectural, incompetent.

(Deposition of Masaaki Yanagi.)

Mr. Collins: I think that this matter goes to one of the very issues involved in this case.

Mr. De Wolfe: What is a hard time, sir?

Mr. Collins: Well, following the next question it is directly related to that. Following that is the answer, as to whether they did or did not have a hard time, I mean, we have no objection to that being stricken out.

The Court: Let it go out.

(A. Yes, they did have a hard time.)

Q. In what way. Will you describe some of the difficulties?

Mr. De Wolfe: Object to that as incompetent, calling for a conclusion and——

Mr. Collins: Well——

Mr. De Wolfe: And I think the answer itself discloses at least in part that it is based on hearsay and conclusions, speculative; conjectural.

Mr. Collins: Well, it would be a matter within the personal knowledge of the witness.

The Court: Read the question and answer, and I will instruct the jury if it should not go in.

Mr. Collins: The question was, "Do you know whether or not the Nisei had a hard time in Japan during the war?" "Answer. Yes, they did have a hard time," and then the question: "In what way? Will you describe some of the difficulties?" and answer, "The main reason was, they ordered them to be naturalized as Japanese and that was because they wanted to call them for the army, and

(Deposition of Masaaki Yanagi.)

there were cases where some of the men after they became Japanese citizens were called to the army."

Mr. De Wolfe: Move that be stricken on the ground it is hearsay and calls for a conclusion; speculative and conjectural.

Mr. Collins: It is a matter within the personal knowledge of the witness as to the existing conditions.

Mr. De Wolfe: It does not say it was; some of it must have come from hearsay, what somebody else thought, the reason for something else.

The Court: The Court is prepared to rule now. The objection will be sustained; let it go out and let the jury disregard it.

(A. The main reason was that they wanted them to be naturalized as Japanese and that was because they wanted to call them for the army and there were cases where some of the men after they became Japanese citizens were called to the army.)

Q. Were the Nisei compelled to register?

A. They were requested to register.

Q. Do you know why Bucky Harris was apprehended by the Kempei-tai?

A. I don't know exactly, but I heard talk about it. [8]

Cross-Examination

By Mr. Story:

Q. How many women regularly participated in the Zero Hour?

A. Regularly just Miss Toguri.

(Deposition of Masaaki Yanagi.)

Q. The other people you mentioned as being on the Zero Hour program were substituting for Miss Toguri?

A. Yes. Mary Ishii and Miss Furuya were with Miss Toguri for a short period of time. They were not regularly there, but they were there at the same time.

Q. What were they doing there while Miss Toguri was there? A. I don't exactly know.

Q. They weren't participating in the program?

A. No, I don't think so.

Q. How many times did you actually observe the Zero Hour program when it was being broadcast in the studio?

A. Three or four times and that was in the monitor's room.

Q. You mention this party where they were dancing on New Year's Eve and as a result one of the persons there was arrested by the Kempei-tai; is that correct?

A. It was not on New Year's Eve, but it was at New Year's time, and it was not during the party but a few days later that he was called by the Kempei-tai.

Q. Was Miss Toguri at this party?

A. No, she wasn't.

Q. What name did Miss Toguri use when she was broadcasting on the Zero Hour program?

A. "Orphan Ann."

Q. Did Miss Toguri ever use the name "Ann"?

(Deposition of Masaaki Yanagi.)

to your knowledge in addition to "Orphan Ann"?

A. I only remember "Orphan Ann."

Q. In these broadcasts when you observed Miss Toguri broadcast, did you ever hear her refer to the American soldiers as "Orphans of the Pacific"?

Mr. Collins: I submit, if Your Honor please, that is calling for the opinion and conclusion of the witness. The testimony was that she did not observe the broadcast. The testimony of the witness was that she did not observe any broadcasts.

The Court: She was there.

Mr. Collins: No foundation has been laid. She had——

The Court: The testimony, as I followed it——

Mr. De Wolfe: Right up above, sir.

The Court: She was in the monitor's room.

Mr. De Wolfe: Yes. Right above, "How many times did you actually observe the Zero Hour program when it was being broadcast in the studio?" "Answer: Three or four times and that was in the monitor's room.

Mr. Collins: I may be in error, the monitor's room might be in the adjoining room. I withdraw my objection.

The Court: Proceed, gentlemen. [9]

A. Yes.

Q. Was it generally known at the radio station that Miss Toguri's part in the Zero Hour program

(Deposition of Masaaki Yanagi.)

was for the purpose of attracting listeners among the soldiers in the Southwest Pacific?

A. Yes, I think the reason they had a girl announcer there was to attract attention of the listeners.

Mr. Tamba: It was also true that the purpose of having other girl announcers was to attract attention, is that correct?

A. Yes.

/s/ MASA AKI YANAGI. [10]

Japan,
City of Tokyo,
American Consular Service—ss.

I do solemnly swear that I will truly and impartially take down in notes and faithfully transcribe the testimony of Masaaki Yanagi, a witness now to be examined. So help me God.

/s/ IRENE CULLINGTON.

Subscribed and sworn to before me this twenty-first day of April, A.D. 1949.

/s/ THOMAS W. AINSWORTH,
Vice Consul of the
United States of America.

[American Consular Service Seal.]

Service No. 599a; Tariff No. 38; No fee prescribed.

Japan,

City of Tokyo,

American Consular Service—ss.

CERTIFICATE

I, Thomas W. Ainsworth, Vice Consul of the United States of America in and for Tokyo, Japan, duly commissioned and qualified, acting under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the Matter of United States of America, Plaintiff, vs. Iva Ikuko Toguri D'Aquino, Defendant, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between United States of America vs. Iva Ikuko Toguri D'Aquino, do hereby certify that in pursuance of the aforesaid stipulation and court order and at the request of Theodore Tamba, counsel for the defendant Iva Ikuko Toguri D'Aquino, I examined Masaaki Yanagi, at my office in Room 335, Mitsui Main Bank Building, Tokyo, Japan, on the twenty-first day of April, A.D. 1949, and that the said witness being to me personally known and known to me to be the same person named and described in the interrogatories, being by me first sworn to testify the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories in the cause in which the aforesaid stipulation, court order, and request for deposition issued, his evidence was taken down and transcribed

under my direction by Irene Cullington, a stenographer, who was by me first duly sworn truly and impartially to take down in notes and faithfully transcribe the testimony of the said witness Masaaki Yanagi, and after having been read over and corrected by him, was subscribed by him in my presence; and I further certify that I am not counsel or kin to any of the parties to this cause or in any manner interested in the result thereof.

In witness whereof, I have hereunto set my hand and seal of office at Tokyo, Japan, this fifth day of May, A.D. 1949.

/s/ THOMAS W. AINSWORTH,
Vice Consul of the
United States of America.

[American Consular Service Seal.]

Service No. 810; Tariff No. 38; No fee prescribed.

[Endorsed]: Filed Aug. 24, 1949.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 31712 R

UNITED STATES OF AMERICA,
Plaintiff,

vs.

IVA IKUKO TOGURI D'AQUINO,
Defendant.

DEPOSITION OF GEORGE OZASA

Deposition of George Ozasa, taken before me, Thomas W. Ainsworth, Vice Consul of the United States of America, in Mitsui Main Bank Building, Room 335, in Tokyo, Japan, under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the Matter of the United States of America vs. Iva Ikuko Toguri D'Aquino, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between the United States of America vs. Iva Ikuko Toguri D'Aquino.

The plaintiff appearing by Frank J. Hennessy, United States District Attorney; Thomas DeWolfe, Special Assistant to the Attorney General, and Noel Story, Special Assistant to the Attorney General, and the defendant, appearing by Wayne N. Collins and Theodore Tamba.

The said interrogatories and answers of the witness thereto were taken stenographically by Irene Cullington and were then transcribed by her under my direction, and the said transcription being thereafter read over correctly to said witness by me and then signed by said witness in my presence.

It is Stipulated that all objections of each of the parties hereto, including the objections to the form of the questions propounded to the witness and to the relevancy, materiality and competency thereof, and the defendant's objections to the use of the deposition, or any part of the deposition, by plaintiff, on the plaintiff's case in chief, shall be reserved to the time of trial in this cause.

GEORGE OZASA

of Tokyo, employed by Broadcasting Corporation of Japan, of lawful age, being by me duly sworn, deposes and says:

Direct Examination

By Mr. Tamba:

Q. What is your full name?

A. George Ozasa.

Q. Where do you reside?

A. Tokyo Ota Ku Magome Higashi 4-33.

Q. What is your present occupation or business?

A. I am now working for Broadcasting Corporation of Japan in the Planning Department, Music Section.

Q. Where were you born?

(Deposition of George Ozasa.)

A. Salt Lake City.

Q. When were you born?

A. June 23, 1919.

Q. Did you receive any formal education in the United States?

A. I had my primary and high school education in Salt Lake City and Los Angeles.

Q. Did you attend any university in the United States?

A. Yes, for year at University of Penn. [2*]

Q. When did you come to Japan?

A. I first came in 1934, after I graduated from High School.

Q. Did you return to the States after that?

A. Yes, in 1939.

Q. I assume after returning to the United States, you returned to Japan again?

A. Yes, in 1940.

Q. You are now a citizen and national of the empire of Japan? A. Yes.

Q. When and under what circumstances did you change your citizenship?

A. I changed my citizenship in the early part of 1942, because it was impossible at that time to secure any job and I had no choice but to become a Japanese citizen at that time if I wanted to earn my living in Japan. I entered the Overseas Department of Radio Tokyo in 1942.

Q. In other words, it was impossible for you

* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Deposition of George Ozasa.)

to live here unless you became a Japanese National? A. Yes.

Q. Were the American citizens of Japanese ancestry having a difficult time in Japan during the war securing employment?

Mr. De Wolfe: I object to that as immaterial and too remote.

The Court: The objection is sustained.

Mr. Collins: I might direct Your Honor's attention to the fact that in connection with that objection, the answer relates directly to the defendant's procurement of employment at Radio Tokyo as one of the Nisei in Japan.

The Court: The Court has ruled. You may proceed.

(A. When the war broke out we were all more or less asked to concentrate in one place and those who had a special talent, such as writing, they were more or less assigned to various jobs and as I had taken up journalism at school, they asked me to work for Radio Tokyo. However, to work for Radio Tokyo one had to give up his American citizenship and become a Japanese subject.)

Q. Do you know what the organization called the Kempei-tai was?

A. Yes, it was sort of military police, but its job was much larger than that and they had practical supervision over all civilians and over the daily lives of people in Japan [3] during the war period.

(Deposition of George Ozasa.)

Q. Do you know of any Kempei-tai being around Radio Tokyo?

A. Yes, quite a few at all times at Radio Tokyo and another thing, there were many people who were assigned by the Kempei-tai to become part time employees of Radio Tokyo, but they were actually on the Kempei-tai payroll but in name they were employees of Radio Tokyo.

Q. Do you know a person by the name of Iva Toguri, also known as Iva D'Aquino?

A. Yes, she was a part time employee of Radio Tokyo and she used to announced for the program known as the "Zero Hour."

Q. Do you recall an occasion when the Zero Hour program was interrupted by a flash news bulletin announcing the fall of Saipan?

A. Yes.

Q. What happened after that flash news was announced?

A. The flash news came in about five minutes before the end of the broadcast and after that the record "Stars and Stripes" was played and because of that the Kempei-tai had us all up for questioning and we were questioned as to why that certain record was played at that time. Another thing, the Kempei-tai actually thought we had played the "Star Spangled Banner" after this news flash on the fall of Saipan, but we proved to the Kempei-tai that the record played was "Stars and Stripes" and not the "Star Spangled Banner" be-

(Deposition of George Ozasa.)

cause we did not have that record in the library at that time. This playing of the "Stars and Stripes" became quite a big problem and I was called by the Kempei-tai three or four times.

Q. Were you detained by the Kempei-tai for that?

A. I was called up on three different occasions and they asked me various questions as to why we had played such and such a record at that time and who was responsible, and at that [4] time Mr. Reyes and Miss Toguri was called before the Kempei-tai and questioned concerning this program.

Q. Who was in the radio broadcasting room when that record was played?

A. Mr. Reyes and Miss Toguri.

Q. Where were you?

A. In the control room.

Q. Was anyone else in the control room?

A. The engineer was.

Q. Was any other member of the cast of the Zero Hour present at that time?

A. No; on that day the Zero Hour was having a party and the only two people in the studio at that time were Reyes and Miss Toguri.

Q. No other member of the Zero Hour program was there? A. No.

Q. Were persons unconnected with the Zero Hour program ever allowed in the broadcasting room?

A. No, that was strictly prohibited.

(Deposition of George Ozasa.)

Q. You say, no one else was allowed?

A. No. Only employees directly connected with the Zero Hour program were allowed. I used to pinch hit for studio people.

Q. What kind of a program was the Zero Hour program, if you recall?

A. It was an hour program—sort of a variety type of program, which used to feature classical music, sweet jazz music and hot swing music with commentaries and news items sandwiched in between.

Q. Was that program one that could be enjoyed by anyone who did not have a good knowledge of English?

A. This program used to carry quite a bit of slang and was [5] a fast moving program and for an ordinary Japanese National or person who knew little English, it would have been impossible for that person to pick up and understand that program.

Q. Do you know whether or not Miss Toguri was particularly friendly with the Japanese people around Radio Tokyo?

A. She was employed in the capacity of part time employee at Radio Tokyo. She used to come in for Zero Hour and go out at the end of it and very few people knew her or had speaking acquaintance with her outside the people directly connected with the Zero Hour, and even people on the Zero Hour knew very little about her, because she used

(Deposition of George Ozasa.)

to come in for her broadcast and as soon as it was over, she would leave.

Q. Did you ever have occasion to notice her associating with prisoners of war?

A. She used to work directly with the Australian, Mr. Cousins, and Mr. Ince and Mr. Reyes, who were directly connected as script writers with the Zero Hour.

Q. Would it be a fair statement to say that she appeared to be very friendly to prisoners of war?

A. Yes, I would say more friendly than to Japanese Nationals.

Q. Who else was on the Zero Hour program besides Miss Toguri and Mr. Reyes.

A. Mr. Mitsushio, head of the Zero Hour Department, and Mr. Oki and Mr. Moriyama, and then there were Ken Ishii and Miss Ishii and Miss Furuya. They were the people outside of the two or three directly connected with the Zero Hour. The Zero Hour was an entire staff by itself composed of about ten to twelve people and they worked entirely apart from the rest of Radio Tokyo.

Q. How many women were on that hour? [6]

A. Altogether there were four women connected with this program. One, Miss Hayakawa, who was connected with the program during its initial stages, used to pinch hit for Iva Toguri when Iva was out in the early part of 1944.

Q. Do you know what became of the records of employment of Radio Tokyo?

(Deposition of George Ozasa.)

A. All records written and recorded of Radio Tokyo were destroyed at the termination of the war by orders of the Army Department.

Q. Do you know what became of the records of employment of Radio Tokyo?

A. They were burned or destroyed. We were specifically ordered to burn any records or scripts that we might have at home.

Q. Was a record made of the Zero Hour broadcast?

A. No record was ever made of the Zero Hour.

Q. Can you tell us when the severe bombing occurred in this area?

A. The bombing started in March, 1945.

Q. What happened to the Zero Hour at that time?

A. It used to go on but with a very reduced staff and Iva was very seldom present.

Q. Do you know whether or not she was absent from her employment during any period of time?

A. After the heavy bombing started she was absent for quite a while and in the early part of 1944 she was absent for quite a period of time and about two or three weeks before the war ended she had already quit Radio Tokyo. She was a part time employee and I do not think they have any definite record of her being employed as a member of Radio Tokyo, so whether or not they required a resignation, I am not sure. Regular members were not allowed to resign.

(Deposition of George Ozasa.)

Q. Was this program of Zero Hour censored?

A. Yes, it was censored by four different departments—the Army Department; the Navy Department; the Department of Communications; and the Board of Information.

Q. Will you tell us what Miss Toguri did?

A. She used to announce parts that had to do with swing music on the Zero Hour.

Q. Did she announce this by scripts?

A. Scripts that were prepared for her by Mr. Cousens or Mr. Ince.

Q. Do you know if Iva Toguri ever prepared any of her own scripts?

A. I personally have never seen her prepare her script. I have seen her many times go over script that Mr. Cousens wrote.

Q. Did any other women besides Miss Toguri broadcast introductions?

A. Miss Ishii and Miss Furuya. Miss Ishii used to broadcast the classic type of music and Miss Furuya broadcast sweet music.

Q. Is Miss Furuya now Mrs. Oki?

A. Yes.

Q. Do you remember the theme song of Zero Hour?

A. "Strike up the Band."

Q. Do you know a person by the name of Ruth Hayakawa?

A. She was a regular employee of Radio Tokyo. She was an announcer.

Q. Did she take part in the Zero Hour?

(Deposition of George Ozasa.)

A. In 1944 when Miss Toguri was out, Ruth used to pinch hit for her for several weeks.

Q. Do you know anything about a program called the "German Hour"?

A. Yes, it was a program edited and put on by the German Embassy, prepared for use by Japanese announcers.

Q. What hour of the day did that program go on? [8]

A. On the European network it went on at one time from 1:00 to 1:30.

Q. Was the time ever changed?

A. I believe at one time it was changed to six in the evening.

Q. Were any women on that program?

A. Yes, Miss Matsunaga.

Q. Will you describe her?

A. She was rather round faced and at times she wore pigtails and her appearance was very similar to Miss Toguri's. Her voice resembled Miss Toguri's in the way that she used to use quite a bit of American slang on the program and her voice registered on the air rather husky and corny, the way Miss Toguri's used to register. I would say much of her scripts resembled Zero Hour scripts very much. She used to use records which were brought to the station by the German Embassy, that is, the jazz records.

Q. Was the German Hour program broadcast in English? A. Yes.

(Deposition of George Ozasa.)

Q. Have you ever heard of a person by the name of "Brundage"?

A. Yes, he is a newspaper reporter, although I never met him personally, but I have heard his name.

Q. Mr. Ozasa, I invite your attention to a statement made by Mr. Brundage to certain parties, whom I do not wish to name at this time, in substance, as follows: "Miss Toguri took over the writing of her own script. Wallace Ince and the Australian had been doing them. They continued on the program as announcers, advisors, etc., but I announced and played the music and I did the propaganda job, too. Some of the propaganda was pretty tough. You can go all out and say it was pretty dirty. I only not made reference about what wives and sweethearts of American troops were doing at home while they were giving their blood and sweat in the mud, heat and rain, and I made flat statements about their alleged misconduct." I will ask you if that statement is true or false?

Mr. De Wolfe: Objected to as not proper impeachment. Brundage was not called by either party. It is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

(A. I would call that statement false on two points. One point, her scripts were written by Mr. Cousens and Mr. Ince and she never wrote any of her scripts herself, and another point on that is that compared to some of the news items and comments that used to go over the radio at that time,

(Deposition of George Ozasa.)

the Zero Hour was kept pretty clean. The contents of the Zero Hour was kept very clean compared to some news items and commentaries that were used during that period.)

Q. Were any so-called dirty statements or propaganda made over the broadcast from Radio Tokyo?

Mr. De Wolfe: I object to that question as being too general and also involved in the same matter as the last question to which objection was sustained. It is not proper impeachment.

The Court: The objection will be overruled. He may answer.

A. In the matter of news items and commentaries, quite a few were, but the Zero Hour was aimed principally at the GI's and in order to stimulate interest in that program, the program was kept on a pretty clean level. That I can say because I went through many scripts myself and I seldom saw any statements that could be termed as dirty.

Q. Mr. Brundage also made another statement in which he said that Miss Toguri stated to him that she was the only woman to ever broadcast over the Zero Hour program. Is that statement true or false?

Mr. De Wolfe: I object to that as incompetent, irrelevant and immaterial and without foundation.

The Court: The objection will be sustained.

(A. That statement is false because, as I mentioned before, there were three other girls connected with the Zero Hour. Each girl had a definite part on the Zero Hour. I might add that each person

(Deposition of George Ozasa.)

on the Zero Hour program had a definite part; one person acted as master of ceremonies, usually Mr. Oki and Moriyama, and another person who just read news, usually Mr. Oki, and there was another person who read commentaries, usually Mr. Mitsushio. [10] At times they used to have short skits and each girl had a definite part. Miss Ishii played ten minutes classical music; Miss Furuya played ten minutes of sweet music and Miss Toguri played ten to fifteen minutes of swing music.)

Q. Did Miss Toguri use any name in announcing?

A. She often used the name of "Orphan Ann." This name was given to her by Mr. Cousens. When this program started they wanted to know what name to go by and Mr. Cousens thought that Ann was short for announcer and they took that name.

Q. Mr. Ozasa, you have talked to Mr. Tillman of the FBI about this case? A. Yes, I have.

Q. That was before you talked to me the other night and this morning, is that correct?

A. Yes.

Q. That is all.

Cross Examination

By Mr. Story:

Q. Mr. Ozasa, you have testified that you changed your citizenship from American to Japanese in 1942, is that correct?

A. After the war started.

(Deposition of George Ozasa.)

Q. Approximately when in 1942 did you change your citizenship? A. Early in 1942.

Q. What were you doing prior to the time you changed citizenship?

A. I was attending college in Japan—College of Foreign Languages.

Q. You stated that in order to work at Radio Tokyo one had to have Japanese citizenship, is that correct?

Mr. De Wolfe: I ask that this question and answer go out because the corresponding matter on direct examination went out. The next two questions should go out with the answers because they went out on direct examination.

The Court: Is there any objection?

Mr. Collins: Yes, there is objection to that, if Your Honor please, because the question is propounded here "You said that in order to work at Radio Tokyo one had to have Japanese citizenship?" It is still pertinent to the issue.

Mr. De Wolfe: The identical matter went out on direct examination.

Mr. Collins: I think that it is because of the method in which the question had been propounded.

Mr. De Wolfe: The testimony went out on direct examination.

The Court: You must get a record. I must rule.

Mr. De Wolfe: On page 3 of this deposition, lines 26 to 28, that identical point went out on our objection.

(Deposition of George Ozasa.)

Mr. Collins: That is the only place it was testified to on direct, and that is what prompted this cross-examination. The question is propounded, if Your Honor please, on the direct examination on page 3: "Were the American citizens of Japanese ancestry having a difficult time during the war securing employment?" You sustained an objection, but the present question is propounded on the cross-examination as follows: "You stated that in order to work at Radio Tokyo one had to have Japanese citizenship. Is that correct?"

Mr. De Wolfe: Yes, but his answer to the question which counsel propounded on direct examination, the last three lines of it, dealt with this subject, work at Radio Tokyo and American citizenship, but whether or not American citizenship was an obstacle to working at Radio Tokyo that question and answer were stricken, and therefore this cross-examination on that identical point is not proper.

The Court: You will have to proceed with question and answer and I will rule.

Mr. Tamba: Which one, Mr. De Wolfe?

Mr. De Wolfe: Page 11, line 26;

"Q. You state that in order to work at Radio Tokyo one had to have Japanese citizenship, is that correct?"

Mr. De Wolfe: I move that that be stricken. We object to it on the ground that the objection to the identical matter was sustained on direct examination.

The Court: Submitted?

(Deposition of George Ozasa.)

Mr. Collins: Yes, Your Honor.

The Court: Objection is sustained.

Mr. De Wolfe: The next question, "Is that statement true?" The same objection for the same reason.

The Court: Same ruling. The objection will be sustained.

(A. Yes.)

Q. Is that statement true? (A. Yes.)

Q. There were no foreign nationals working at Radio Tokyo? [11]

A. Not of Japanese blood.

Q. You are telling us that if you were of Japanese blood you could not work at Radio Tokyo without being a Japanese National?

A. Yes, as a full time employee. There were quite a few foreigners working for Radio Tokyo all employed as part time employees. There was a definite difference between full time and part time employees.

Q. Could a part time employee of Japanese blood but of other citizenship be employed at Radio Tokyo?

A. So far as I know, no. In the case of Miss Toguri, she was not employed by Radio Tokyo; she was forced by the Army Department to work for Radio Tokyo; they forced her upon Radio Tokyo.

Q. Are you testifying as to something you know of your own knowledge or as to something you have heard or presume?

(Deposition of George Ozasa.)

Mr. Tamba: You mean in reference to Miss Toguri?

Mr. Story: Yes.

Q. Mr. Ozasa, do you know the meaning of an oath? A. Yes.

Q. Do you know you are subject to punishment for not telling the truth? A. Yes.

Q. We only want you to testify as to what you know of your own knowledge; not what you have heard from someone else. Now, of your own knowledge, do you know that a part time employee of Radio Tokyo of Japanese blood had to be a Japanese citizen in order to work for the radio station?

A. Yes, I do.

Q. You personally know that each and every person of Japanese blood that worked, either part time or full time for Radio Tokyo was a Japanese National? [12]

A. Yes.

Q. Mr. Ozasa, you have testified that there were all kinds of Kempei-tai at Radio Tokyo, is that correct?

A. What I meant was that people who were not actually Kempei-tai but were employed by the Kempei-tai to give information on what was going on at Radio Tokyo.

Q. Is that what you testify to? A. Yes.

Q. Name some of these people who belonged to the Kempei-tai at the radio station.

A. Mr. Uno was connected with the Kempei-tai.

(Deposition of George Ozasa.)

Q. Do you know of your own knowledge that he was employed and paid by the Kempei-tai?

A. Yes, I do.

Q. Do you know the names of any other Kempei-tai at the radio station?

A. I can't give you definite names.

Q. Then you don't know anybody connected with the Kempei-tai but Mr. Uno, is that correct?

A. Yes. After the bombings started there were Kempei-tai who made periodical appearances at Radio Tokyo and I, myself, was checked several times by members of the Kempei-tai. I definitely cannot report the names of the fellows. That we were watched I definitely know, because my personal things in the place where I used to live during the war was searched several times.

Q. You have testified that after the fall of Saipan the "Stars and Stripes" was played on the Zero Hour?

A. Yes. The Zero Hour was an hour program and just before the end of the Zero Hour program the flash news on the fall of Saipan came in and the record that played was the "Fair of the Fairest" and it was turned over and the "Stars and Stripes" [13] played until the end of the program, which was at seven o'clock. That record "Stars and Stripes" which was played was on the other side of "Fair of the Fairest" and the Kempei-tai thought that we had played the "Star Spangled Banner," and I proved to them that we did not play

(Deposition of George Ozasa.)

the "Star Spangled Banner" because we did not have the record.

Q. Did Miss Toguri have anything to do with the playing of this record?

A. She was in the studio with Mr. Reyes.

Q. Tell us what was done.

A. Mr. Reyes was at the turn table and he turned it over and since she was in the studio with Mr. Reyes I do not see that she had a definite part in the thing.

Q. Who actually physically played the recording?

A. Mr. Reyes.

Q. You have testified that Miss Toguri was questioned by the Kempei-tai after this incident. Were you personally present when she was interviewed?

A. No.

Q. Then of your own knowledge you do *not whether* or not she was questioned by the Kempei-tai?

A. Everybody concerned with the program was questioned. We were all called in—one at a time.

Q. Were you present when she was questioned by the Kempei-tai?

A. No.

Q. You have testified that Miss Toguri was friendly with the prisoners of war at the radio station and not necessarily friendly with the Japanese Nationals, is that correct?

A. Yes.

Q. What were these prisoners of war doing at the radio station?

A. Mr. Cousens used to write commentaries and

(Deposition of George Ozasa.)

acted as coach for news writers and announcers and Mr. Ince acted in the same [14] capacity.

Q. Were these prisoners of war writing scripts for Radio Tokyo? A. Yes.

Q. Were some of these prisoners of war broadcasting propaganda for the Japanese radio?

A. They had this program, which was called *Hi no Maru Hour*, which was put on by the Army Department and it was a half hour broadcast every day.

Q. Were the prisoners of war broadcasting?

A. Yes.

Q. Mr. Ozasa, you have testified that Miss Toguri was away from the radio station in 1944?

A. In the early part of 1944.

Q. How long was she away from the radio station?

A. I cannot definitely say, but I would say about a month. That was when Ruth Hayakawa was pinch hitting for her.

Q. You have testified that Miss Toguri was away from the radio station in 1945, when was that?

A. Toward the end of the war — about three weeks before the end of the war and from then she did not come at all to the radio station and she was on and off quite frequently in 1945.

Q. Is that the only time she was away from the radio station in 1945 for an extended period of time?

A. As far as I know. I, myself, very seldom went to the Zero Hour rooms and there were times

(Deposition of George Ozasa.)

when I was busy with my own work and she may have been absent but it did not come to my knowledge.

Q. How many times a week was the Zero Hour broadcast? A. Every day of the week.

Q. Tell me approximately how many times you were actually at the Zero Hour and observed the broadcast of the Zero Hour. [15]

A. At the beginning of the Zero Hour program I was there practically every day; roughly, about 15 or 16 days when I saw the whole program.

Q. You have testified that four different women had participated in the Zero Hour broadcast. Were these persons substituting for Miss Toguri, or did they have a regular portion of the Zero Hour program daily?

A. Miss Hayakawa was substituting for Miss Toguri, but the other two had a regular part in the Zero Hour program.

Q. In other words, they appeared every day in the program? A. Yes.

Q. What were the names of these persons?

A. Miss Ishii and Miss Furuya.

Q. Mr. Ozasa, tell us of your own knowledge as to whom prepared the script for Miss Toguri?

Q. Of my own knowledge, I know that Mr. Cousens prepared the script.

Q. Have you actually seen Mr. Cousens prepare the script?

(Deposition of George Ozasa.)

A. Yes. I saw Miss Toguri and Mr. Cousens go over the scripts.

Q. Did Miss Toguri ever change the scripts?

A. I don't know that. I saw them go over the scripts together, and he would coach her on how to stress this point or that point, but what was actually in the script I never saw; I only heard it over the broadcast.

Q. When did Major Cousens leave the Radio Station? A. What do you mean?

Q. Did Cousens remain at the radio station until the end of the war?

A. The early part of August.

Q. You are positive that Major Cousens remained at the radio station and prepared scripts for Miss Toguri up until August, 1945? [16]

A. Toward the end of the war, as I said, Miss Toguri was not on the program any more in August.

Q. Give the date, approximately, when Miss Toguri quit participating in the Zero Hour program?

A. To my knowledge, about the middle of July.

Q. Major Cousens was still there at that time?

A. Yes; he was participating in the Zero Hour.

Q. He was writing Miss Toguri's scripts up until July, 1945? A. So far as I know, he was.

Q. What was the purpose of Miss Toguri's part on the Zero Hour program?

A. I would say that her part was to furnish entertainment.

(Deposition of George Ozasa.)

Q. Did you testify in your direct examination that it was to draw listeners among the soldiers?

A. Yes.

Q. You are telling us that Miss Toguri's part was to draw listeners? A. Yes.

Q. Was there any propaganda on the Zero Hour after Miss Toguri's part on the program?

Mr. Collins: I submit, if Your Honor please, that is calling for the opinion and conclusion of the witness; improper cross-examination, incompetent, irrelevant and immaterial.

Mr. DeWolfe: On direct examination my recollection is that there is testimony, I think in part over my objection, as to whether the program had anything further in it, or anything of a propaganda nature. Those were the very words that I remembered in the question propounded on direct examination.

Mr. Collins: My recollection is that it was stricken.

Mr. DeWolfe: No sir, my objection to that was overruled.

The Court: Read the question Mr. Reporter.

(Question read.)

The Court: It may be answered. Objection will be overruled.

A. You mean in her part?

Q. After her part was over, was there any propaganda following her part in the Zero Hour program?

(Deposition of George Ozasa.)

A. I am not sure whether she went on in the beginning or the end.

Q. Was there any propaganda at all broadcast on that Zero Hour program?

Mr. Collins: I submit, if Your Honor please, that is calling for the opinion and conclusion of the witness; it is improper cross-examination and it is incompetent, irrelevant and immaterial.

The Court: Read the question.

(Question read.)

The Court: Objection will be overruled; he may answer.

A. All news and commentaries read were propaganda.

Q. When you were present in the studio and observed Miss Toguri broadcast, did you ever hear her make a remark such as this: "Boneheads of the Pacific, don't you wish you were home by the fireside or home with an ice cold drink or walking or driving in the woods with your girl friend, [17] instead of being in the foxholes or jungles fighting mosquitoes"?

A. No, I did not. I heard her use the expression "Boneheads," but I never heard the other part.

Q. You never heard her mention, "Don't you wish you were home by the fireside"? A. No.

Q. Do you remember making a statement to Special Agent Tillman of the FBI?

A. I spoke with him, yes.

Q. Did you tell Mr. Tillman at the time you spoke to him that you heard Miss Toguri say, "Boneheads

(Deposition of George Ozasa.)

of the Pacific, don't you wish you were home by the fireside rather than fighting mosquitoes in the jungles"?

A. No, I never made that statement to him. I made the expression "Boneheads of the Pacific." I heard that several times on the air.

Q. When did you talk to Mr. Tillman?

A. In January—I just saw him once or twice.

Q. Do you recall telling Mr. Tillman that the purpose of the program was to make the American soldiers in the Southwest Pacific homesick?

Mr. Collins: I object to that on the ground that it is improper cross-examination; it is not proper impeachment; no foundation has been laid; and it is incompetent, irrelevant and immaterial.

The Court: Read the question.

(Question read.)

The Court: Objection will be overruled; he may answer.

A. Yes.

Q. Did Miss Toguri appear to be pleased with her success as an announcer on the Zero Hour program?

A. I didn't know Miss Toguri well enough to answer that question. I knew her by sight but I was not on speaking terms with her.

Q. Did you ever observe anything concerning Miss Toguri which indicated an unwillingness to participate in the radio broadcast?

(Deposition of George Ozasa.)

A. If you could call the fact that she was not on time for her broadcasts unwillingness to participate in the program. [18] When she was scheduled on the first part of the program and she was not on time, they would have to switch her part to the end.

Q. My question was, did you ever observe anything to indicate an unwillingness on her part to participate in this radio broadcast?

A. That is the only answer I could make. I did not know her very well, as I very seldom spoke to her.

Q. Do you recall telling Mr. Tillman that you never heard any comments that indicated that she was unwilling to participate in the radio broadcast?

Mr. Collins: I object to that on the grounds that it is calling for the opinion and conclusion of the witness, would be hearsay and is not proper impeachment, no foundation has been laid, and it is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

Mr. Collins: And improper cross-examination.

A. No, I have never said anything like that. My only speaking acquaintance was to say "hello" or "good afternoon."

Q. I think that is all.

Re-direct Examination

By Mr. Tamba:

Q. Mr. Ozasa, do you know the name of the Kempei-tai who questioned you?

(Testimony of George Ozasa.)

A. No, I don't.

Q. How many different members of the Kempeitai questioned you?

A. As I recall there were several fellows around.

Q. Do you know the name of the Kempeitai who searched your home in your absence?

A. No. They never gave names.

Q. Regarding the actual playing of the records, did Miss Toguri ever put a record on the machine or was that done by someone else?

A. I don't know if she ever acted in that capacity of record playing.

Q. But you know that she introduced records?

A. Yes.

Q. Do you know whether or not Miss Toguri ever became a Japanese citizen? [19]

A. I don't know.

Q. Did you ever see prisoners of war slapped?

A. No.

Q. Do you recall Mr. Cousens being absent from the radio station on account of illness?

A. Yes. He was in the Juntendo Hospital. One of the hospitals right near the Apartments.

Q. How long was he in that hospital, if you know? A. I don't know.

Q. Can you give us an estimate?

A. Two or three weeks.

Q. Do you know what year that was?

A. No, I don't know—end of 1943 or early 1944; I am not sure.

(Testimony of George Ozasa.)

Q. Did you ever see Mr. Ince coach Miss Toguri?

A. I have seen him several times giving pointers on announcing. He used to be the coach for all the announcers.

Q. That is all.

Re-Cross-Examination

By Mr. Story:

Q. Do you know Mr. Philip D'Aquino?

A. He is Miss Toguri's husband. I recall seeing him several times around the radio station, but who he was I had no knowledge.

Q. Have you talked to Mr. D'Aquino since you talked to Mr. Tillman in January of this year?

A. The first time I met Mr. D'Aquino was after the war when I went to Mr. Tamba's office.

Q. Did you talk to Mr. D'Aquino?

A. Mr. Tamba was there and Mr. Nakamura and several others.

Q. Have you talked to Mr. D'Aquino alone?

A. No.

Q. At any time since you talked to Mr. Tillman?

A. No. [20]

Mr. Tamba: As a matter of fact, I introduced you to Mr. D'Aquino, isn't that a fact?

A. Yes.

Q. That is all. [21]

Japan,
City of Tokyo,
American Consular Service—ss.

CERTIFICATE

I, Thomas W. Ainsworth, Vice Consul of the United States of America in and for Tokyo, Japan, duly commissioned and qualified, acting under the authority of a certain stipulation for taking oral designations abroad, and upon order of the United States District Court, made and entered March 22, 1949, in the Matter of the United States of America, Plaintiff, vs. Iva Ikuko Toguri D'Aquino, Defendant, pending in the Southern Division of the United States District Court, for the Northern District of California, and at issue between United States of America vs. Iva Ikuko Toguri D'Aquino, do hereby certify that in pursuance of the aforesaid stipulation and court order and at the request of Theodore Tamba, Counsel for the defendant Iva Ikuko Toguri D'Aquino I examined George Ozasa, at my office in Room 335, Mitsui Main Bank Building, Tokyo, Japan, on the twentieth day of April, A.D. 1949, and that the said witness being to me personally known and known to me to be the same person named and described in the interrogatories, being by me first sworn to testify the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories in the cause in which the aforesaid stipulation, court order, and request for deposition issued, his evidence

was taken down and transcribed under my direction by Irene Cullington, a stenographer who was by me first duly sworn truly and impartially to take down in notes and faithfully transcribe the testimony of the said witness George Ozasa, and after having been read over and corrected by him was subscribed by him in my presence; and I further certify that I am not counsel or kin to any of the parties to this cause or in any manner interested in the result thereof.

In witness whereof, I have hereunto set my hand and seal of office at Tokyo, Japan, this fifth day of May, A.D. 1949.

/s/ THOMAS W. AINSWORTH,
Vice Consul of the
United States of America.

[American Consular Service Seal.]

Service No. 806; Tariff No. 38; No fee prescribed.

[Endorsed]: Filed Aug. 25, 1949.